Supreme Court, U.S.
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No._____

IN THE

SUPREME COURT OF THE UNITED STATES

STEPHANIE S. ACTON,

**Petitioner*

vs.

CITY OF EATON: LESLIE RENNER, DAVE DAILY, PHILLIP ROMEO, JOHN PETRY; PAT TAYLOR, City Mayor and Treasurer of P.C. Youth Foundation; PREBLE COUNTY: CHRISTOPHER B. WASHINGTON; PC. Prosecutor, REBECCA FERGUSON; P.C. Sheriff TOM HAYES; HONORABLE WILFRED G. DUES, Judge of P.C. Court of Common Pleas and Founder of P.C. Youth Foundation; PARKER-HANNIFIN CORPORATION: WAYNE PINKSTAFF, JENNY HADDUX; SAMARITAN BEHAVIORAL HEALTH, INC., LORI MARCELLINO, Psy.; PREBLE COUNTY YOUTH FOUNDATION; PREBLE COUNTY MEDICAL CENTER: HAROLD ALLEN FERGUSON, DO., MARK STEVEN VOSLER, DO. and P.C. Health Commissioner.

Respondents,

On Petition for Writ of Certiorari to the United States Court of Appeals For The Sixth Circuit

---

PETITION FOR WRIT OF CERTIORARI

STEPHANIE S. ACTON, *Pro Se
3045 US 35 West
Eaton, Ohio 45320

No._____

IN THE

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STEPHANIE S. ACTON,

**Petitioner*

vs.

CITY OF EATON: LESLIE RENNER, DAVE DAILY, PHILLIP ROMEO, JOHN PETRY; PAT TAYLOR, City Mayor and Treasurer of P.C. Youth Foundation;
PREBLE COUNTY: CHRISTOPHER B. WASHINGTON; PC. Prosecutor, REBECCA FERGUSON; P.C. Sheriff TOM HAYES;
HONORABLE WILFRED G. DUES, Judge of P.C. Court of Common Pleas and Founder of P.C. Youth Foundation;
PARKER-HANNIFIN CORPORATION: WAYNE PINKSTAFF, JENNY HADDUX; SAMARITAN BEHAVIORAL HEALTH, INC., LORI MARCELLINO, Psy.;
PREBLE COUNTY YOUTH FOUNDATION;
PREBLE COUNTY MEDICAL CENTER:
HAROLD ALLEN FERGUSON, DO.,
MARK STEVEN VOSLER, DO. and P.C. Health Commissioner.

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PETITION FOR WRIT OF CERTIORARI

STEPHANIE S. ACTON, *Pro Se
3045 US 35 West
Eaton, Ohio 45320

QUESTIONS PRESENTED

Stephanie S. Acton, Petitioner, Pro Se, filed a civil rights complaint on April 4, 2003, in United States District Court for the Southern District Western Division. Case number 03-*00116* is styled as *Stephanie S. Acton v. City of Eaton, et al.*

On October 9, 2003, docket 81, Petitioner was granted 60 days extension of time by Honorable Michael R. Merz. Following Rule 34, V (a) and (b), of Federal Rules of Civil Court, Ms. Acton sent letters by mail to Defendant lawyers wherein Petitioner requested specific records possessed by numerous Defendants.

Contrary to Honorable Michael R. Merz' assumption, as stated within his order, that Ms. Acton sought records only pertaining to specifically Defendant lawyer, Mark Schumacher, when in fact, Ms Acton requested information pertaining to Defendant Judge "Bill" Dues' multi-million-dollar-long-term-local-tax-revenue-increasing-money-making-business-plan from each one of his defendant business partners including, but not limited to Defendant City of Eaton, Defendant Preble County, Defendant Preble County Medical Center, Defendant Dr. Allen Ferguson, Defendant Dr, Mark Vosler, Defendant Parker-Hannifin Corporation, and "Bill" Dues' Defendant Preble County Youth Foundation.

As suggested by Honorable Merz and required in Rule 34, V (a) and (b), Ms. Acton allowed all defendant lawyers 30 days time to respond. Ms. Acton received no verbal or written response from any one Defendant lawyer. Therefore, Ms. Acton would need to have submitted petition to the court for court order release of those records as provided under Rule 37, V (a), V (a) (1), V (a) (2) (A) and (B).

Stephanie S. Acton, Petitioner, Pro Se, is aware that, as Movant, the burden of proof lies on her shoulders. Further, Ms. Acton can reasonably deduce, as well as can any other reasonable and intelligent person or judge, that no defendant, nor their lawyer, would willfully give over possession of any specific documents or testimony to the Plaintiff or the Court that would further substantiate Ms. Acton's claims of civil rights violations against each defendant, without first a compulsory court order to do so.

Hence, following Rule 34 as suggested by Honorable Merz, Ms Acton was preparing to move on provisions under Rule 37, and submit to Honorable Michael R. Merz' court, a Petition for Discovery and for court order release of specific documentation relating to the Defendant Judge "Bill" Dues' multi-million-dollar-long-term-local-tax-revenue-increasing-money-making-business-plan/deal possessed by the numerous defendants, who each acted independent of one another, and jointly with one another, to conspire retaliation against Ms. Acton, who spoke about corruption involving many of the Defendants at a public meeting, and to act in such away as to cause Ms. Acton to suffer injury that ultimately denies Ms. Acton her Constitutional rights.

Further, Ms. Acton would have also requested compulsory court order to release related documentation from former Preble County Commissioners, John and Eleanor *Hake*, also formally of *Daily and Hake Realtors, Inc.*, who *donated* the initial three acres of farm land for the Defendant Judge "Bill" Dues" plan/deal to build upon. Of course, there would be the rezoning issues addressed by both Defendant Preble County and Defendant City of Eaton, but those issues, of course, would be resolved with no problem and would be of public record.

To actually get his/their plan/deal set into motion, Defendant Judge "Bill" Dues needed $3.3 million from area lending institutes. Those institutes are the Eaton Nat'l Bank & Trust Co., Fifth Third Bank, First Nat'l Bank of

Southwestern Ohio, First Nat'l Bank, Somerville Nat'l Bank, Twin Valley Bank, and U.S. Bank. Ms. Acton would have requested compulsory release of all documentation relating to Defendant Judge "Bill" Dues' multi-million-dollar-long-term-local-tax-revenue-increasing-money-making-business-plan/deal possessed by each of these lending institutions.

This loan for $3.3 million was added to the $2.1 million dollars from private sources of which also include, John and Eleanor *Hake*, Defendant Parker-Hannifin Corporation, Kettering Medical Center Network, Defendant Dr. Allen Ferguson, and Defendant Dr. Mark Vosler and his wife whose maiden name is Peggy *Hake*.

Ms. Acton would request compulsory release of those records, as provided under Rule 37, as they would be possessed by Defendant Preble County Youth Foundation, Defendant Dr. Allen Ferguson, Defendant Dr. Mark Vosler and Defendant Parker-Hannifin Corporation, as well as, all mentioned contributors who are non-Defendants.

The "economic impact from the center is expected to generate $30 million during the first five years," according to Defendant Judge "Bill" Dues in a Dayton Daily Newspaper article written by Cathy Mong, of cathy_mong@coxohio.com, as he bragged about how successful his/their plan for the community had become.

Ms. Acton would request compulsory release of records, as provided under Rule 37, from Defendant Judge "Bill" Dues in relation to, not only the first five years, but for the long term of his and other Defendant's multi-million-dollar-local-tax-revenue-increasing-money-making-business-plan/deal.

Ms. Acton had 10 days remaining of her granted 60-day time extension, yet she was denied the opportunity to submit a motion, petition, or request court order for release of

records, or for subpoena to appear for those who "don't want to get involved" voluntarily.

Moreover, Ms. Acton would have requested the release of records from each Defendant containing all the details of Defendant Judge "Bill" Dues' plan/deal for which Ms. Acton has suffered unjustly from at least March 8, 2001, and continues to suffer from to this day.

It was then when Defendant Judge Dues made a calculated choice to abuse his judicial power to protect his/their plan/deal by manipulating certain provisions under ORC 5122. (Refer to Appendix I on pages 71-76), for the purpose of protecting his/their personal financial gain, a blatant violation of Canon 3 as it appears in Appendix E on pages 62-65. Hence his choice to illegally arrange for Ms. Acton to be detained in a forensic mental hospital was a choice that legally renders void his immunity from civil complaint and his responsibility of financial recompense to Ms. Acton for the injury she suffered, and continues to suffer to this day because of Defendant Judge Dues' illegal actions, both as a judge and as Defendant Preble County Youth Foundation president.

It was then, March 8, 2001, when Eaton Police Chief Defendant Phillip Romeo submitted malicious and vexatious false affidavit to essentially create a fictitious criminal mental status of Ms. Acton. Choosing to knowingly swear to a falsehood, conspiring to swear to a falsehood, and complicity to create a falsehood to injure Ms. Acton is illegal. Defendant Phillip Romeo made a choice that renders void his immunity from civil complaint as well as his responsibility of financial recompense to Ms. Acton for the injury she suffered and continues to suffer to this day because of his illegal actions.

Furthermore, his choosing to knowingly swear to a falsehood, conspiring to submit a false affidavit, and complicity to create a fictitious criminal mental status of Ms. Acton dishonored his policeman's badge. But moreover,

Defendant Phillip Romeo's involvement in the conspiracy to protect Defendant Judge "Bill" Dues business plan, and his complicity to assist in the illegal actions designed to protect Defendant Judge Dues' plan, and his vexatious efforts to submit a false affidavit in retaliation to Ms. Acton for voicing her allegations of his involvement in corruption, subsequently denying Ms. Acton her civil rights, and maliciously causing Ms. Acton to suffer long term injury, also disgraced his military status.

Hence, for Defendant City of Eaton, Defendant Dave Daily, Defendant Pat Taylor, Defendant John Petry, as well as, Defendant Phillip Romeo, to claim protection from civil suit under The Soldiers' and Sailors' Act is outrageous as it would blaspheme the essence of what our country is all about.

The disconcerting thing about Defendant Phillip Romeo's illegal actions is that he chose to do these things during such a crucial pending time as now when our nation's military efforts are to support and uphold democracy and liberty to be seen before the entire world! How more blatantly hypocritical, disgraceful, and sabotaging to this country's liberty can his illegal actions be, illegal actions that are very similar to those of terrorists, working independenly and jointly with other Defendants, who intentionally retaliated against Ms. Acton, caused injury to Ms. Acton and deprived her of her rights by punishing her for expressing them in the first place.

It was then, March 8, 2001, when Defendant Parker-Hannifin Corporation submitted to the City of Eaton intentionally misleading and false witness to further fuel the conspired created fictitious perception of a criminal mental status of Ms. Acton, an illegal choice that carries with it grounds for a civil complaint and for financial responsibility for injury suffered by Ms. Acton, who continues to suffer to this day because of the illegal actions of Parker-Hannifin and its agents, Jenny Haddux, Wayne Pinkstaff, and Jeff Beier.

It was then, March 8, 2001, when Defendant Preble County Sheriff Tom Hayes conspired with other Defendants and entered into complicity thereby submitting false and intentional misleading documentation to also substantiate the fictitious perception that Ms. Acton was mentally ill with criminal intent. Choosing to conspire, entering into complicity, and submitting falsehoods and misleading documentation is illegal, an illegal choice that renders void Defendant Preble County Sheriff Tom Hayes' immunity from civil complaint as well as from his responsibility for financial recompense to Ms. Acton for the injury Ms. Acton suffered then and still suffers from to this day because of his illegal actions.

It was then, March 8, 2001, when Defendant Preble County contracted Defendant Samaritan Behavioral Health's psychologist, Defendant Dr. Lori Marcellino, who knowingly and maliciously submitted false affidavit to further substantiate Defendant Phillip Romeo's false affidavit. Conspiring to submit, entering into complicity, and submitting this false affidavit is a choice that carries with it grounds for civil complaint and financial responsibility for the injury Ms. Acton suffered and continually suffers from to this day because of the irresponsible actions of Samaritan Behavioral Health and because of the illegal actions of Defendant Lori Marcellino.

Although Ms. Marcellino lacks the licensing of a medical doctor, she is a "doctor" of psychology. Further, Lori Marcellino is quite aware that, predictably, the induced mental torture Ms. Acton would experience when being detained in a state forensic mental facility with those who truly are criminally insane, when in fact Ms. Acton was not, could effectively cause mental disorder such as, at the very least, Adjustment Disorder, as Lori Marcellino can attest to, environmental stressors will induce mental disorder.

Moreover, it was then March 8, 2001, when Preble County Prosecutor Defendant Rebecca Ferguson's fax was

used, just as she had conspired with Dues and those included in the Dues' plan, Ms. Ferguson entered into complicity, and she created the fictitious information and hearsay that it contained. It was intended to be possessed by and then used by Defendant Police Chief Romeo to further substantiate the created fictitious perception that Ms. Acton was acting criminally "crazy" while in the courthouse as she was requesting copies of public record.

Defendant Rebecca Ferguson's false hearsay fax, presented to and accepted as evidence by Dues, was maliciously intended to not only hospitalize Ms. Acton, but it was also intended to viciously cause great injury, designed to be emotional sabotage, and further to induce long term mental stress to Ms. Acton.

More importantly, however, Defendant Preble County Prosecutor Rebecca Ferguson's calculated choice to fax unsubstantiated and untrue *proof* of Ms. Acton's alleged criminal mental status was also designed to protect all of those defendants included in the Dues' plan, to put a stop of Ms. Acton's pursuits in the Ohio Industrial Commission hearing, as well as, further public rendering of the circumstances and particulars of the insurance fraud to avoid OSH A, thereby protecting Defendant Parker-Hannifin and Defendant Dr. Mark Vosler.

But most important of all, Defendant Rebecca Ferguson intended her fictitious memorandum to be used to stop Ms. Acton from pursuing justice for herself, as well as other Parker employees. Ms. Acton's righteous agenda could have proved detrimental to Defendant Judge Dues' plan which would have not only negatively effected her bosses, Defendant Preble County Commissioners' future tax revenue, but it would have also drastically affected the future tax revenue of the City of Eaton.

Moreover, and equally as important, Ms. Ferguson chose to enter into complicity and involved herself in the

conspiracy to illegally detain Ms. Acton, thereby shutting Ms. Acton's mouth, because to do so could also drastically effect Defendant Rebecca Ferguson's family financial future, yet another illegal choice that blatantly violates Rule 3.6 and 3.8 of Model Rules of Professional Conduct as it appears in Appendix F on page 66. Choosing to involve herself in conspiracy, choosing to enter into complicity, and acting out in such a way as to submit false hearsay to cause injury to Ms. Acton, was an illegal choice that renders void her immunity from civil complaint as well as her responsibility of financial recompense for the injury suffered by Ms. Acton who still suffers to this day because of her illegal actions.

These many Defendants who participated in this gross abuse of power, independently and jointly, arranged for Ms. Acton to be "(ill)"legally caught up in fighting for her rights, fighting to convince psychiatric professionals that she was being truthful, not delusional, that she was actually victimized by these many Defendants, all within the involuntary mental evaluation system. The constitutional rights due to Ms. Acton that were outrageously violated and denied to her, are what Ms. Acton continues to fight for to this very day!

On November 28, 2003, without notice of a change regarding Petitioner's extension of time, on day 50 Honorable Michael R. Merz, of the United States District Court for the Southern District Western Division, filed summary judgment against Petitioner and dismissed Ms. Acton's complaint.

Hence, the question brought before this U.S. Supreme Court relates to the denial of Petitioner's fundamental due process, be she with the disability of mental disorder of some degree, or without.

Ms. Acton, petitioner, Pro Se, had submitted to the court of Honorable Michael R. Merz several hundred copies of documentation, many of which would need Ms. Acton's

explanation of significance, yet Honorable Michael R. Merz apparently assumed his absolute understanding of all those documents, or rather his *unconcern of their understanding*, and issued a final order.

After all, apparently Honorable Judge Merz had "official" reason to believe Ms. Acton was/is criminally "crazy" and surely there would be no substantial merit to her complaint or her need for court compulsory assistance.

Without viewing and understanding pertinent hidden documentation possessed by numerous Defendants such as the long term business plan between Judge "Bill Dues, the City of Eaton, the County of Preble, Parker-Hannifin Corporation, Preble County Medical Center, numerous lending institutes, and John and Eleanor Hake; without hearing deposition testimony from Plaintiff witnesses of whom would need to be subpoenaed, Honorable Michael R. Merz arbitrarily ruled favorably upon the Motions against Ms. Acton, Motions of which Honorable Michael R. Merz could have equally presumed Ms. Acton would desire stayed.

After all, Ms. Acton, pro se, requested an extension of 60 days, not 50 days!

On December 19, 2003, Ms. Acton timely submitted a Petition for Rehearing to the United States Court of Appeals for the Sixth Circuit, case number 04-3095. Honorable Martha Craig Daughtrey, Honorable Deborah Cook, and Honorable Jerome Farris served on the panel that ordered a Denial for Rehearing, thereby upholding Honorable Michael R. Merz' order for Summary Judgment and Dismissal.

After all, presumably Ms. Acton remains "crazy", right? What possible merit could "crazy" pro se Ms. Acton present to any honorable court!

With intent to not rely on any one of any previous interpretations of the constitution, Ms. Acton submits a Writ

of Certiorari to this United States Supreme Court, and merely respectfully expects and requests the equal protection that is provided within the United States Constitution, just as it was intended when it was written and agreed to as the foundation of our country.

Ms. Acton questions the constitutionality of the decisions made by these Honorable Federal Judges whose interpretations were to uphold an order of Summary Judgment and Dismissal of Ms. Acton's case, without first their relying on the legitimate processes of Discovery, as provided in Rule34 and Rule 37, of which Ms. Acton, pro se, is constitutionally entitled?

Is it not a right of Ms. Acton, Petitioner, Pro Se, with the disability of mental disorder to some degree, or without, to participate in and posses a legitimate Discovery prior to a final decision and order by any judge at any level, be it in a municipal jurisdiction, county jurisdiction, state jurisdiction, federal jurisdiction, or Dues' jurisdiction?

Ms. Acton, Petitioner, Pro Se, wishes to regain her constitutional right to discovery, to regain her constitutional right to fundamental due process, as it surely does not interfere with the constitutional rights of Respondents/Defendants and is legitimate, necessary, and pertinent, to allow Ms. Acton the opportunity to possess, present, and explain pertinent presented and especially hidden documentation, as well as enter Plaintiff witness and expert witness testimony, all to further substantiate her allegations of blatant civil rights violations resulting from the independent actions of defendants, as well as the jointly conspired and outrageous abuse of judicial power committed and interdependently involved, by Defendant-Respondents, each and all conspiring to protect his/their multi-million-dollar-plan/deal.

LIST OF PARTIES

The Petitioner, Stephanie S. Acton, appears as Pro Se, 3045 US 35 West, Eaton, Ohio 45320, (937)-456-3731.

The Respondents City of Eaton; Leslie Renner, City Clerk; Dave Daily, City Manager; Police Chief Phillip Romeo; John Petry, City Attorney; Pat Taylor, Mayor and Treasurer of PC Youth Foundation, appears by Erin B. Moore of Green & Green, 800 Performance Place, 109 North Main Street, Dayton, Ohio 45402-1290, (937)-224-3333.

The Respondents, Preble County; Christopfer B. Washington, PC Clerk; Rebecca Ferguson, PC Prosecutor; and PC Sheriff Tom Hayes, appears by Christopher W. Carrigg, Charity S. Rob, Neil F. Freund, and Daniel F. Getty of Freund, Freeze & Arnald, 1800 One Dayton Centre, 1 South Main Street, Dayton, Ohio 45402-2017, (937)-222-2424.

The Respondent, Honorable Wilfred Dues, Judge of PC Court of Common Pleas and Founder of PC Youth Foundation, appears by Ralph E. Burnham and Hope A. Smith of Montgomery, Rennie & Jonson, 36 East Seventh Street, Suite 2100, Cincinnati, Ohio 45202, (513)-241-4722.

The Respondent. Parker-Hannifin Corporation: Wayne Pinkstaff, Human Resource Manager; and Jenny Haddux, Insurance Specialist, appears by Bruce G. Hearey and Allison McCallum of Spieth, Bell, McCurdy & Newell Co., L.P.A., 927 Euclid Avenue, Suite 2000, Cleveland, Ohio 44115, (216)-696-4700.

Condolences to the family of PC Sheriff Tom Hayes as he has deceased since Petitioner's filing of her complaint on April 4, 2003, in The United States District Court for the Southern District of Ohio Western Division. PC Prosecutor, Rebecca Ferguson has recently retired. Eaton City Attorney, John Petry has also retired. Pat Taylor no longer functions as mayor, nor sits on city council.

LIST OF PARTIES CONTINUED

The Respondents, Samaritan Behavioral Health, Inc. and Lori Marcellino, Psy D., appears by John F. Haviland of Bieser, Greer & Landis LLP, 400 National City Center, 6 North Main Street, Dayton, Ohio 45402, (937)-223-3277.

The Respondents, Preble County Youth Foundation; Founder, Wilfred Dues; Treasurer, Pat Taylor, appears by Grey W. Bennett, Bennett Law Building, 200 West Main Street, Eaton, Ohio45320, (937)-456-4100.

The Respondents, Harold Allen Ferguson, DO. And Mark Steven Vosler, DO., appears by Mark L. Schumacher and Vaseem S. Hadi of Freund, Freeze & Arnold, One Dayton Centre, Suite 1800, Dayton, Ohio 45402-2017, (937)-222-2424.

The Respondent, Preble County Medical Center, appears by Robert F. Cowdrey of Statman, Harris, Siegel & Eyrich, LLC, 110 North Main Street, Suite 1520, Dayton, Ohio 45402, (937)- 222-1090.

TABLE OF CONTENTS

COVER PAGE	(i)
QUESTIONS PRESENTED	(ii - xi)
LIST OF PARTIES	(xii, xiii)
TABLE OF CONTENTS	(xiv-xvi)
OPINION BELOW	2
JURISDICTION	3
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	4-6
STATEMENT OF THE CASE	7-29
REASONS FOR GRANTING THE WRIT	29-30
CONCLUSION	30
APPENDIX A: Sixth Circuit Court of Appeals, At Cincinnati, Ohio; Honorable Martha Craig Daughtrey, Honorable Deborah Cook, Honorable Jerome Farris; Case No. 04-3095; Denial of Rehearing; Entered December 7, 2004	31-36
APPENDIX B: Sixth Circuit Court of Appeals, At Cincinnati, Ohio; Honorable Deborah Cook, Honorable Jerome Farris; Case No. 04-3095; Denial of Rehearing; Filed February 4, 2005	37-40

APPENDIX C: US District Court the Southern District Western Division at Dayton, Ohio; Honorable Michael R. Merz; Case No. 3-03-0116; Docket 87, Dismissal and Summary Judgment, Entered on November 28, 2003 41-58

APPENDIX D: US District Court the Southern District Western Division at Dayton, Ohio; Honorable Michael R. Merz; 3-03-0116; Grant Extension of Time entered October 9, 2003, docket 81 59-61

APPENDIX E: American Bar Association's Model Code of Judicial Conduct (in part) 62-65

APPENDIX F: American Bar Association's Model Rules of Professional Conduct (in part) 66

APPENDIX G: Federal Rules of Civil Procedure: V. Depositions and discovery> Rule 34 Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes (in part) 67-68

APPENDIX H: Federal Rules of Civil Procedure: V. Depositions and discovery> Rule 37 Failure to make or Co-operate in Discovery; Sanctions (in part) 69-70

APPENDIX I: Ohio Revised Code: Section 5122: Hospitalization of Mentally Ill (in part) 71-76

APPENDIX J: Ohio Revised Code
Section 4113.
Miscellaneous Labor Provisions (in part) 77-79

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Respondents,

On Petition for Writ of Certiorari to the United States Court of Appeals For The Sixth Circuit

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PETITION FOR WRIT OF CERTIORARI

Stephanie S. Acton, Pro Se, Petitioner herein, prays that a Writ of Certiorari be granted by this esteemed court, as Ms. Acton presents issues for reviewing the order of denial by the Sixth Circuit Court of Appeals, wherein that court

upheld the Dismissal and Summary Judgment ordered on November 28, 2004 by Honorable Michael R. Merz of the United States District Court for the Southern District of Ohio Western Division, as it pertains to case number 03-00116 styled *Stephanie S. Acton vs. City of Eaton, et al.*

OPINIONS BELOW

The Order entered December 7, 2004, in the Sixth Circuit Court of Appeals, Cincinnati, Ohio, in the case styled Stephanie S. Acton v. City of Eaton, et al., case number 04-3095, may be found in the Appendix to this Petition, Appendix A, at pages 31-36.

The opinion of the Sixth Circuit Court of Appeals, Cincinnati, Ohio, filed February 4, 2005, in the case styled Stephanie S. Acton v. City of Eaton, et al., case number 04-3095, may be found in the Appendix to this Petition, Appendix B, at pages 37-40.

The Dismissal and Summary Judgment ordered by Honorable Michael R. Merz of the United States District Court for the Southern District Western Division, filed as docket 87 on November 28, 2003, may be found in the Appendix to this Petition, Appendix C, at pages 41-58.

The granted extension of time so ordered by Honorable Michael Merz of the United States District Court for the Southern District Western Division, filed as docket 81 on October 9, 2003, may be found in the Appendix to this Petition, Appendix D, at pages 59-61.

JURISDICTION

Stephanie S. Acton, Petitioner, Pro Se, commenced a civil action in the United States District Court for the Southern District of Ohio Western Division. Case number 03-00116 was filed on April 4, 2003. Ms. Acton is proceeding with this lawsuit under Title 42 of the United States Codes, section 1983 and related sections there to, and Ms. Acton alleges a violation of rights under the First, Fourth, and Fourteenth Amendments to the Constitution and Ohio state claims. Further, Ms. Acton is seeking damages and equitable relief under Title 42 U.S.C., section 1983 and Ohio state law. On November 28, 2003, Judge Michael R. Merz entered decision and order granting Summary Judgment and Dismissal of Ms. Acton's case. Ms Acton timely filed a Petition for Rehearing in the United States Court of Appeals for the Sixth Circuit on December 21, 2003, case number 04-3095. An Order to deny Petitioner a rehearing was filed on February 4, 2005. The U.S. Court of Appeals for the Sixth Circuit was the highest U.S. Court in which a decision could be had in this case. The jurisdiction of this Court is invoked under Title 28, Part IV, Chapter 81, Section 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following provisions of the Constitution of the United States: the First Amendment, which provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances";

and the Fourth Amendment, which provides, in pertinent part:

> "The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, ...";

and the Fifth Amendment, which provides, in pertinent part:

> " . . . nor be deprived of life, liberty, or property, without due process of law; . . .";

and the Sixth Amendment, which provides, in pertinent part:

> " . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense";

and the Fourteenth Amendment, Section 1, which provides, in pertinent part:

> " . . . nor shall any State deprive any person of life liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws";

and the following provision of the United States Code: 42 U.S.C. 1983, which provides, in pertinent part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United

> States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable";

and the following portions of Canon 3 of the Model Code of Judicial Conduct as sanctified by the American Bar Association: 3A, 3B, 3B(1), 3B(2), 3B(5), 3B(6), 3B(7), 3D, 3D(1), 3D(2), 3E, 3E(1), 3E(1)(a), set out in the Appendix to this Petition as Appendix E, pages 62-65;

and the following portions of the Model Rules of Professional Conduct: Rule 3.6(a) and Rule 3.8(f), set out in the Appendix to this Petition as Appendix F, page 66;

and the following portions of Ohio Revised Code Section 4113.52: (A); (B); (C); (D), set out in the Appendix to this Petition as Appendix J, pages 77-79 (in part);

and the following portions of Ohio Revised Code Section 5122.11: set out in the Appendix to this petition as Appendix I, pages 71-76 (in part);

and the following portions of Federal Rules of Civil Procedure, Rule 34; set out in the Appendix to this petition as Appendix G, pages 67-68 (in part);

and the following portions of Federal Rules of Civil Procedure, Rule 37; set out in the Appendix to this petition as Appendix H, pages 69-70 (in part).

STATEMENT OF THE CASE

Stephanie S. Acton lives in mostly rural Preble County, Ohio, population around 43,000, about two miles west of the county seat, Eaton. In the mid 1990's, Ms. Acton was employed in Eaton at Defendant Parker-Hannifin Corporation. She was employed by Defendant City of Eaton as a volunteer certified Emergency Medical Technician. Ms. Acton has a genuine desire to help people in need.

Unbeknownst to Ms. Acton, also in the mid 1990's, Wilfred Dues was also a resident of Preble County and functioned as a judge. Unbeknownst to Ms. Acton, Dues had established a foundation that he named Defendant Preble County Youth Foundation, Inc., a foundation wherein he functions as president. Presumably one would believe that he has a genuine heart for the youth of this community.

In 1997, while operating industrial machinery known as "chuckers" at the Eaton Parker-Hannifin, Ms. Acton was subjected to breathing in contaminated expelled compressed air (industrial violations covered in Ohio Revised Code, Section 3704, refer to Appendix J page 78).

Ms. Acton became sick and sought treatment from Defendant Dr. Mark Vosler for *her first and only time in her life*. Her regular physician was out of town. Ms. Acton's symptoms apparently stemmed from an industrial air quality issue addressed in ORC 3704, regulated by the Occupational Safety and Health Administration (OSHA), Ms. Acton documented about her injury on a Defendant Parker-Hannifin Corporation insurance form specifically used to reimburse Ms. Acton for missed wages. Then Ms. Acton submitted it to Dr. Mark Vosler's nursing assistant/receptionist for processing.

Meanwhile, unbeknownst to Ms. Acton, Defendant Judge "Bill" Dues had been meeting with officials of Defendant City of Eaton, including Defendant Dave *Daily*

and Rick *Daily*, both formally of *Daily and Hake Realtor, Inc.*, as well as officials of Defendant Preble County, including the Board of Commissioners. Defendant Wilfred Dues would occasionally give report at public meetings.

Unbeknownst to Ms. Acton, Defendant Judge "Bill" Dues was putting forth extensive effort to pull together a multi-million-dollar-long-term-local-tax-revenue-increasing-money-making-business-plan/deal that also included Defendant Preble County; Defendant City of Eaton; Defendant real estate business, Preble County Medical Center; Defendant Dr. Allen Ferguson; and Dr. Mark Vosler, as well as the Dayton, Ohio, Chapter of the Y.M.C.A.; land contributor, John and Eleanor *Hake*, formally of *Daily and Hake Realtors, Inc.*; Kettering Medical Center Network, and Defendant Parker-Hannifin Corporation among others.

Meanwhile on July 19,1997, after only signing and dating the physician's portion of the insurance form, rather than completing the documentation and properly processing that insurance form, Defendant Dr. Mark Vosler chose to give it back to representatives of self insured Defendant Parker-Hannifin Corporation.

Having served over 20 years as Preble County Medical Commissioner, surely Defendant Dr. Mark Vosler would be in the know of OSHA regulations and state laws related to OSHA regulations. Dr. Mark Vosler made a calculated choice to conspire with Parker-Hannifin Corporation, entered into complicity with Parker, and committed insurance fraud by not involving himself with OSHA violations that could be detrimental to his/their personal financial future as it related to Defendant Judge "Bill" Dues multi-million-dollar-long-term-local-tax-revenue-increasing-business-plan/deal.

Subsequently, on July 25, 1997, Defendant Jenny Haddux, Parker-Hannifin Insurance Specialist, and Bill Fackson, department manager, allowed Ms. Acton to view

that particular form dated July 19, 1997 and proceeded to threaten Ms. Acton, insisting that she submit yet another form to Defendant Dr. Mark Vosler, one that would not potentially prompt an O.S.H.A. investigation.

Ms. Acton was extremely intimidated, so she complied with their illegal demand.

Defendant Dr. Mark Vosler not only signed and dated the fraudulent form as July 28, 2001, but he also completed the physician's portion of the form before resubmitting it to Defendant Parker-Hannifin's Insurance Specialist, Defendant Jenny Haddux who then processed the fraudulent form.

If not for the illegal actions of insurance fraud, conspiracy to commit insurance fraud, complicity and conspiracy to cover-up the insurance fraud, both independently and jointly with other defendants, by Defendant Jenny Haddux an agent of Defendant Parker-Hannifin Corporation, Ms. Acton would not have suffered injury provable and commencing on or about March 8, 2001, and continuing to this day because of her/Parker's illegal actions.

But for the illegal action of choosing to participate in industrial insurance fraud, conspiring to commit insurance fraud, complicity and conspiring to cover-up insurance fraud, rendering void Defendant Dr. Mark Vosler's claim of immunity as an official of the county, thereby rendering him accountable for any civil complaints and subsequent financial responsibility for Ms. Acton's suffered injury, provable and commencing on or about March 8, 2001, and continuing to this day because of his illegal actions.

Further, unbeknownst to Ms. Acton, Defendant Dr. Mark Vosler not only had a vested interest in real estate business, Defendant Preble County Medical Center, but for 20 years he has functioned as Preble County Health Commissioner, he would clearly have been involved with the

business meetings of the county. Clearly, he would have known about the stipulations contained within the Enterprise Zone tax shelter contracted by Defendant Parker-Hannifin Corporation, wherein Parker agrees to be *"a good citizen"* while residing in Defendant Preble County. Self-insured industries that intentionally violate OSHA regulations and submit fraudulent insurance forms to themselves by way of threatening extortion are *not very good community citizens*, now are they?

Further, Defendant Dr. Mark Vosler became married to Peggy *Hake*, thereby marrying into the family of John and Eleanor *Hake* who were previous commissioners for Defendant Preble County, who were formally of *Daily and Hake Realtor, Inc.*, but they also provided the initial 3 acres of land for Defendant Judge "Bill" Dues multi-million-dollar-business plan/deal, a plan of which Defendant Dr. Mark Vosler and his wife are also a party.

About a month later, Ms. Acton was horrified to hear that a young man had received mutilating injury to his head as it was smashed by a hydraulic press at another Defendant Parker-Hannifin Corporation shop in Defendant Preble County. The hearsay was that there was no safety stops on the machine, a violation regulated by OSHA. Not using safety precautions and safety equipment was a common Defendant Parker-Hannifin practice that saved operating time, thus increasing the numbers as it pertained to production efficacy. This method of crunching numbers, although unsafe for employees, looks good on paper for the stockholders and benefits management and blue-collar workers wherein bonuses and profit sharing are concerned.

OSHA has it on record where Defendant Parker-Hannifin has been fined for this type of dangerous machining practice, the lack of safety stops and "lock-out-tag-out".

Because Ms. Acton was distraught, having participated in something illegal, Ms. Acton reported the

fraud to O.S.H.A. They said that she would need to report it to the prosecuting attorney; Ms. Acton reported the fraud to the Department of Insurance for the State of Ohio. They said that she would have to report it to the local prosecuting attorney; Ms. Acton spoke to a representative of Workers' Compensation. They told her to report it to the local prosecutor; Ms. Acton talked to a few union representatives. They told her that she would need to report it to the local prosecuting attorney. (Here's a hoot! By phone conversation, Ms. Acton reported it to former Ohio Representative Gene Krebs, formally a Defendant Preble County commissioner. He said to report it to state agencies). Refer to Appendix J, page 77-78.

Because Ms. Acton had always been totally uninterested in politics, Ms. Acton had to inquire as to exactly who was the Preble County Prosecutor and the City of Eaton Attorney. Further, she spent some time in the local library reviewing through some of the Ohio Revised Code.

Ms. Acton discovered ORC Section 4113.52 pertaining to employees reporting violations of state and federal law; refer to Appendix J, pages 77-79.

Ms. Acton not only reported the circumstances of the insurance fraud to Defendant Jeff Beier, Plant Manager of Defendant Parker-Hannifin and Vicki Volkerding, secretary to Defendant Wayne Pinkstaff, but Ms. Acton also reported the fraud to Defendant Preble County Prosecutor Rebecca Ferguson, as well as, Defendant Eaton City Attorney, John Petry, just as written in ORC.

Unbeknownst to Ms. Acton, Defendant Judge "Bill" Dues' multi-million-dollar-long-term-local-tax-revenue-increasing-money-making-business-planning/dealing was coming along marvelously. Defendant Jeff Beier of Defendant Parker-Hannifin would become vice-president of Defendant "Bill" Dues' Defendant Preble County Youth Foundation.

Quite some time had elapsed and Ms. Acton received no written communications, hence if not for the action of calculated disinterest, conspiracy to act disinterested, complicity and conspiracy to cover-up insurance fraud, independently and jointly, by Defendant Parker-Hannifin Corporation, Defendant Jeff Beier, Defendant Wayne Pinkstaff, Defendant Rebecca Ferguson and Defendant John Petry, and conspiring to be disinterested in violations of ORC 4113.52(A)(1)(b) and (A)(2) and (A)(3), as it appears in Appendix J, on pages 77-79, Ms. Acton would not have suffered injury, provable and commencing on or about March 8, 2001.

However, in the meantime, Ms. Acton went out of her way to discover and talk to other employees of Defendant Parker-Hannifin who were also instructed as to how to fill out insurance forms with respect to avoiding Workers' Comp claims and/or OSHA involvement. Ms. Acton went as far as to submit advertisement on the local cable t.v. network. Ms. Acton did receive response, but they "don't want to get involved" voluntarily. They fear harassment from management and losing their job, their very livelihood.

In 1998, during an OSHA investigation requested by Ms. Acton, at the Eaton shop, Ms. Acton was *transferred* from Defendant Parker-Hannifin's Eaton shop to their Lewisburg shop, also in Defendant Preble County. Refer to Appendix J, page 79.

In 1999, yet another industrial maiming resulted from an incident at Defendant Parker-Hannifin Corporation. A man was required by management to clean plating tanks using the unsafe production increasing, number crunching method. He slipped into a drum of nasty corrosive plating chemicals that resulted in the cooking of his flesh to the point of it "pooling around his ankles", a quote from Carol Mann, a fellow Eaton EMT who was a member of the crew that responded to that 911 call.

Ms. Acton became overwhelmed with grief and feelings of guilt. "My God," she thought, "I have a heart to help people, yet in some indirect way, I had contributed to Parker-Hannifin avoiding O.S.H.A.". The irony was that Ms Acton, volunteering as an EMT for Eaton, responded to the 911 call for help from Parker employees, yet submitted a fraudulent insurance form, indirectly giving rise for the potential of them getting hurt in the first place!

By this time, Ms. Acton's "nerves" were worn very thin, hence she was then treated by her family physician, Defendant "Doc" Allen Ferguson. After Ms. Acton confided in detail to him about the fraudulent insurance form and how it involved Defendant Dr. Mark Vosler and Defendant Parker-Hannifin. Ms. Acton told him that the Defendants Preble County Prosecutor Rebecca Ferguson, the City Attorney John Petry, and Parker-Hannifin management did absolutely nothing about it following Ms. Acton's submission of her complaint. Ms. Acton told "Doc" about the one too many preventable "accidents" at Parker.

Defendant Dr. Allen Ferguson prescribed medication to treat depression and anxiety and ordered that she not work for a period of time as written on a slip of paper and given to Defendant Jenny Haddux, Parker-Hannifin Insurance Specialist. Defendant Parker-Hannifin fired Ms. Acton for the reason of "no call, no show", while on "Doc's" medical leave of work duties in September 1999. (ORC 4113.52 in Appendix J, page 79.

Ms. Acton was totally oblivious of Defendant Judge "Bill" Dues' continuing multi-million-dollar-long-term-local-tax-revenue-increasing-money-making-business-planning/dealings as the founder of Defendant Preble County Youth Foundation, moreover, Ms. Acton was completely unaware of who this "Bill" Dues was in the first place! Her only knowledge of the business politics of Eaton or Preble County was that she volunteered as an EMT

Ms. Acton worked as a crewmember for the 2000 Census. It was then when Ms. Acton shared her story with another census crewmember, Betty Shelton, a life long resident of Preble County. Betty said, "Stephanie, don't you know that your former doctor, old man Harold Ferguson and Preble County Prosecutor "Becky" Ferguson are brother and sister? That makes your current "Doc" Allen her nephew."

After the census job ran out, Ms Acton was hired by D & D Driving School, owned by Sharon R. Postigo, 3125 Wilmington Pike, Kettering, Ohio, 45421, 937-294-7206. Ms. Acton was trained and became certified by the State of Ohio as a driving instructor in August 2000.

Moreover, now that Ms. Acton was aware that her long time family physician Defendant "Doc" Allen Ferguson was intertwined in this mess to a degree, Ms. Acton got back to her desire of trying to "right a wrong". Her greatest fear and concern was that some one would eventually die at Parker-Hannifin simply because there was clearly an agenda, one that was well hidden, that one too many local officials and their relatives appear to be a part of!

Ms. Acton spent some time at the courthouse pulling records, asking questions, and requesting copies of records. Ms. Acton noted eyebrows raising, whispering, and heads shaking. Apparently, to request copies of and to review public documents, especially when "officials" are zeroed in on, is not the norm and is not appreciated in Preble County.

Once again, Ms. Acton contacted Defendant City Attorney, John Petry, and Defendant Preble County Prosecutor, Rebecca Ferguson, this time by certified written correspondence so as to document her efforts. At this point, Ms. Acton knew that the chances of them doing the right thing were slim to none. However, giving them yet another opportunity to do the right thing seemed to Ms. Acton to somehow have merit.

Ms. Acton received no response, hence, Ms. Acton suffered injury, provable and commencing on or about March 8, 2001, due to the act of disinterest and the illegal acts of conspiracy and complicity to cover-up insurance fraud, by Defendant Preble County, agent Defendant PC Prosecutor Rebecca Ferguson, Defendant City of Eaton, and agent Defendant City Attorney John Petry, independently and jointly with other defendants.

By late 2000 and early 2001, Ms. Acton contacted Ohio Workers' Compensation and reminded a representative of her past conversations with them. The representative did, indeed recall the circumstances and suggested, "Since you have not submitted a claim to Workers' Comp for the incident in July 1997, why not submit one now?" Ms. Acton was no longer employed with Defendant Parker-Hannifin, however the representative said that it wouldn't matter. "Workers Comp will probably deny your claim, but it will give you opportunity to get it on record. You can appeal to the Ohio Industrial Commission."

By this time Ms. Acton was fed up with living in this community, not because the community isn't a great place to live and raise kids, but because of the apparent corrupt business practices of the officials who seemingly *control* Defendant Preble County rather than *serve* Preble County residents.

In December 2000, on the weekends, Ms. Acton began attending Southern State Community College, 1850 Davids Drive, Wilmington, Ohio, 45177, 937-382-6645, to acquire the training and experience of driving "big rigs". This would give Ms. Acton an outlet to leave the area, yet come back intermittently to be with her family, friends, and attend her home church.

Ms. Acton's main instructor was Ed Mullins, who now functions as Training Manager. He formerly worked for

Schneider Truck Leasing as a training specialist who assisted in the design of Schneider's safety protocols.

Meanwhile, also occurring in early 2001, unbeknownst to Ms. Acton, Defendant Judge "Bill" Dues' multi-million-dollar-long-term-local-tax-revenue-increasing-money-making-business-planning/dealings were getting closer to becoming reality.

In February 2001, Ms. Acton filed her claim with Workers' Comp as it pertained to her injury in July of 1997. By the end of February, Workers' Comp sided with Parker and her claim was denied, of course. However, Ms. Acton's intent was the appeal for a hearing before the Ohio Industrial Commission, which she immediately filed, once again putting the Defendant Parker-Hannifin issue on yet another public record.

The Industrial Commission sent notice to Ms. Acton and Defendant Parker-Hannifin announcing the hearing that would be at the beginning of April 2001.

Defendant City of Eaton hired a new police chief named Defendant Phillip Romeo at the beginning of 2001. Ms. Acton thought that she would give this new police chief an opportunity to do the right thing and truly investigate. Ms. Acton went to the police station and admitted to her part in insurance fraud of a federal degree; she even submitted proof. Ms. Acton desired to be charged in some way, not because she was "crazy", but because Ms. Acton wanted to get this illegal mess documented in a courtroom. Ms. Acton not only admitted to taking part in insurance fraud, but she had documents that verified the existence of two insurance forms, thus proving the fraud that transpired involving Defendant Dr. Mark Vosler, Defendant Parker-Hannifin, and victim, Ms. Acton.

Ms Acton had the proof in the form of copies of the two insurance forms because she had previously gone to

Defendant Dr. Mark Vosler's office and requested copies of her entire file. Having been treated by him only once, there wouldn't be much in it, but thank God, the file also contained copies of both insurance forms.

Violating what are now known as HIPPA regulations, Dr. Vosler's medical receptionist did not check Ms. Acton's ID, nor did she have Ms. Acton sign an authorization to release the record. However, Ms. Acton walked out of his office with a copy of that record in hand. Ms. Acton began to wonder if anyone in Preble County or Eaton respects state and federal laws!

In February 2001, Ms. Acton was a student on the weekends and a driving instructor through the week, giving little time for her volunteer EMT position. Ms. Acton informed Eaton Emergency Squad Captain Marsha Stonecash, that she would have to be taken off of scheduling for a period of time.

Defendant Police Chief Romeo's response to Ms. Acton's complaint/admission to guilt was to get into Ms. Acton's personal face/space and smugly inform Ms. Acton that he "personally investigated and there was nothing to it". Ms. Acton became instantly angry and said something like, "How did you pull that off without a court order to release my medical file to you? I sure as hell didn't sign an authorization to release it! I guess I'll have to file a complaint about that too. Should I file it with you or "Aunt Becky"? Defendant Chief Phillip Romeo got red faced and obviously very angry. Evidently Ms. Acton knew more about the Ohio laws than he had anticipated. He threateningly requested that Ms. Acton leave the City Building, so she promptly walked out.

Ms. Acton then realized that she was employed by the City of Eaton, which by definition is a business. So, Ms. Acton once again followed ORC. 4113.52 (Refer to Appendix J, pages 77-79).

Ms. Acton personally filed a complaint to the City Manager, Defendant Dave *Daily*, and the Mayor, Defendant Pat Taylor. Ms. Acton informed them that Chief Romeo claims to have seen Ms. Acton's medical file without a legal authorization. Furthermore, Ms. Acton presumed a degree of corruption within the city and county that she verbalized to both *Daily* and Taylor.

Unfortunately, unbeknownst to Ms. Acton, Eaton City Manager, Defendant Dave *Daily*, formerly of *Daily and Hake Realtors, Inc.* and City Mayor Defendant Pat Taylor, treasurer of Defendant Judge "Bill" Dues' Defendant Preble County Youth Foundation, both were very much in the loop with the Defendant Judge "Bill" Dues multi-million-dollar-long-term-local-tax-revenue-increasing-money-making-business-plans/deals.

Because of the act of disinterest, the act of conspiracy and complicity to cover-up insurance fraud, the act of conspiracy and complicity to cover-up corruption within both Preble County and the City of Eaton, the act of participating in the cover-up of insurance fraud and corruption, independently and jointly with other defendants by Defendant Dave *Daily*, Ms. Acton suffered injury, provable and commencing on or about March 8, 2001, and continuing to this date because of Dave Daily's illegal actions.

Because Defendant Pat Taylor threatened Ms. Acton to keep her mouth shut, or else he would "personally see to it that the city take [you} through that courthouse that [you're] so worried about", Ms. Acton followed formal procedures for speaking at a public city council meeting.

Because of the illegal act of threatening Ms. Acton to keep her mouth shut, thereby inducing fear to deny Ms. Acton's right to the first amendment, because of the act of disinterest, because of participating in the act to cover-up insurance fraud, because of participating in the act to cover-up corruption within the business of both Preble County and

City of Eaton, because of the act of conspiracy and complicity to cover-up both insurance fraud and corruption, by Defendant Pat Taylor, both independently and jointly with other defendants, Ms. Acton suffered injury, provable and commencing on or about March 8, 2001, continuing to this day because of Pat Taylor's illegal actions.

Once again following ORC. 4113.52, Ms. Acton then went to her immediate Eaton EMS supervisor, Marsha Stonecash, and told her the whole story. Ms. Acton further informed Chief Marsha Stonecash that she intended to officially resign on February 20th, 2001, during the monthly public meeting of Eaton City Council.

Defendant Mayor Pat Taylor allowed only 5 minutes for Ms. Acton to speak, Ms. Acton complied and condensed the story. Ms. Acton publicly announced that she was threatened and that she would submit a complaint with Defendant Preble County Sheriff Tom Hayes, which she did. Ms. Acton truly expected Dr. Mark Vosler or Parker-Hannifin or someone to file a complaint of slander or libel as a result of Ms. Acton *vocalizing* that she had *documents*, but that ramification is not what happened.

What did happen completely blindsided Ms. Acton, as well as the numerous pertinent persons in Ms. Acton's life, all of whom, if given the opportunity by this court, will by subpoena or willful testimony, testify as to the sound and stable mental stability of Ms. Acton as they each one witnessed at that time in February-March of 2001.

As an employee of D & D Driving School, Ms. Acton was responsible for the lives of many youth of Preble and Montgomery County's, hence owner, Sharon Postigo had a vested interest in being constantly aware of the mental status of Ms. Acton. Sharon Postigo was never given opportunity to testify on Ms. Acton's behalf because Defendant Judge "Bill" with-a-multi-million-dollar-plan Dues, never afforded

Ms. Acton the due process of ORC 5122.12 as it appears in Appendix I, on pages 74-75.

As a commercial driving student of Southern State Community College, who not only drove a training semi with cargo weighing thousands of pounds, but she drove it over Ohio highways where other motorists could have potentially been hurt or killed, if indeed, Ms. Acton was truly "homicidal, suicidal, or delusional". Training Manager, Ed Mullins, had a vested interest in being constantly aware of the mental status of Ms. Acton, yet he was never afforded the opportunity to testify on Ms. Acton's behalf because Defendant Judge "Bill" with-a-multi-million-dollar-plan Dues never allowed Ms. Acton the liberty of due process contained in ORC 5122.12. Refer to Appendix I,pages 74-75.

Ms. Acton has attended Christ Cathedral of 51 Best Street, Dayton, Ohio 45401, 937-223-8505, for several years. Dr. Leon Stutzman is Ms. Acton's pastor. He has a vested interest in Ms. Acton's mental status, yet he was never given opportunity to testify on Ms. Acton's behalf because Defendant Judge "Bill" with-a-multi-million-dollar-plan Dues never afforded Ms. Acton the due process of ORC 5122.12. Refer to Appendix I, pages 74-75.

As an EMT employed by the City of Eaton, Captain Marsha Stonecash had a vested interest in Ms. Acton's mental status, yet Mrs. Stonecash was never given opportunity to testify on Ms. Acton's behalf because Defendant Judge "Bill" with-a-multi-million-dollar-plan Dues never afforded Ms. Acton the due process of ORC 5122.12. Refer to Appendix I, pages 74-75.

Ms. Acton's family physician, Defendant "Doc" Ferguson professionally, ethically, and morally had a vested interest in Ms. Acton's mental status, and according to his lawyer, he "didn't want to get involved", especially during Ms. Acton's illegal detention. (No wonder! Gee, I'd hate to have to be honest and testify for the benefit of Ms. Acton

when she unknowingly is in pursuit of keeping me("Doc") from my millions that "Bill" Dues will make for me and my associates!)

If not for the act of blatant disinterest, the act of conspiring and complicity to cover-up the mental stableness of Ms. Acton, participating in the act of covering-up Ms. Acton's mental stableness, by Defendant Dr. Allen Ferguson, independently and jointly with other defendants, Ms. Acton suffered injury, provable and commencing on or about March 8, 2001, and continuing to this day due to his illegal actions.

Ms. Acton's close friends and family had/has a vested interest in Ms. Acton's mental status, yet they were never given opportunity to testify on Ms. Acton's behalf because Judge "Bill" with-a-multi-million-dollar-plan Dues never afforded Ms. Acton the due process of ORC 5122.12. Refer to Appendix I, pages 74-75.

Apparently Defendant Eaton's new Defendant Police Chief Phillip Romeo, who Ms. Acton publicly announced was corrupt and violated ORC and Federal confidentiality laws, went to Defendant Judge "Bill" with-a-big-plan Dues, or maybe Dues went to the chief, regardless, Defendant Romeo submitted an affidavit of mostly lies, falsely alleging that Ms. Acton was "homicidal, suicidal, delusional, and possessed strong religious beliefs", and therefore a danger to herself and the community. Ms. Acton had/has a strong relationship with God of the Bible, however, Ms. Acton was not homicidal, suicidal, or delusional.

As previously mentioned, Defendant Romeo's choice to conspire with all other Defendants, to enter into complicity and to submit a false affidavit to protect Defendant Judge "Bill" with-a-big-million-dollar-plan Dues, effectively forfeited his immunity as a police officer and disgraced his military uniform as well, thereby forfeiting his/their claim to protection by the Soldier's and Sailor's Act.

Actually, Ms. Acton believes that Defendant Judge "Bill" with-a-multi-million-dollar-plan Dues called a meeting of all the other Defendants, in one form or another, and they all entered into complicity and contributed to his new emergency plan of shutting Ms. Acton's mouth, and defaming her for the purpose of discrediting her testimony as it pertains to the now needed protection of Defendant Judge "Bill" and-all-others-with-the-multi-million-dollar Dues' plan.

Further, Defendant Judge "Bill' with-a-new-emergency-plan Dues has many years of expertise in the legal system as it pertains to forensic hospitals for the criminally insane. Defendant Judge "Bill" with-a-plan Dues presumed that Ms. Acton would suffer a degree of mental and emotional stress. Moreover, he was fully aware that the odds of Ms. Acton being physically assaulted, raped, or killed were greatly increased while detained at TVPS' Forensic Hospital on co-ed ward 53 wherein housed the criminally insane.

The main assault is that to secure his huge multi-million-dollar-long-term-local-tax-revenue-increasing-money-making-business-plan/deal, and to protect his fellow Defendant business associates from Ms. Acton's truthful allegations, Defendant Judge "Bill" now-I-got-a-new-emergency-plan Dues made a calculated decision to illegally manipulate ORC and abused the power and authority of his judicial robe, thereby forfeiting his immunity as a judge. After all, who would dare to question his authority or integrity, he wears a judicial robe! (Refer to parts of Canon 3, Appendix E, pages 62-65.)

As previously noted, neither Ms. Acton nor her immediate family, friends, pastor, instructor, or bosses, nor Ms. Acton's choice of legal representative were given notice of any hearings pertaining to Ms. Acton, a direct and calculated denial of due process by Defendant Judge Dues, notice that is provided under ORC 5112.12.

Why did Dues skip this part of the ORC? He intentionally skipped that part of Ms. Acton's due process because he knew Ms. Acton was not "crazy" and would, no doubt prove it. Besides, he didn't want any court records containing the truth of the matter at hand now. He has money to make: he can't risk doing things legally at this point!

To create a basis to attack Ms. Acton, Defendant Judge "Bill" Dues and other Defendants arranged for documentation from Defendant Parker-Hannifin and all of the top officials of Defendant Eaton and Defendant Preble County, including a fax that amounted to a contribution of hearsay from Defendant Preble County Prosecutor Rebecca Ferguson.

As previously mentioned, Defendant Ms. Ferguson made a calculated choice to conspire with the cover-up of Defendant Judge Dues' plan, Defendant Rebecca Ferguson made a calculated choice to conspire with Defendant Parker-Hannifin to keep Ms. Acton from attending the scheduled hearing before the Ohio Industrial Commission. Defendant Ms. Ferguson conspired with Defendant members of Defendant Preble County Medical Center to aid in the protection of her family's future multi-million dollar investment.

To further assault and cause injury to Ms. Acton, Defendant Rebecca Ferguson's long history of expertise with issues of mental illnesses, forensic hospitals, and the legal system, all afforded Ms. Ferguson the knowledge that to illegally detain Ms. Acton, with a sound mind, and to illegally lock Ms. Acton behind secured doors with the criminally insane, would potentially cause Ms. Acton much emotional distress and could very well induce serious mental disorder. Further, Defendant Rebecca Ferguson's experiences as an expert also gave her the knowledge that Ms. Acton could very well have been physically assaulted, raped, or even killed.

If employees of hers, or anyone else in the courthouse truly had cause to believe Ms. Acton to be "crazy" as "Aunt Becky" claimed in her memorandum, why did they not personally give affidavit or deposition? Answer: Because no one had reason to believe Ms. Acton to be of unsound mind, after all, because they worked in the courthouse they more than chance, knew about the big Dues' plan and "didn't want to get involved".

Ms. Acton would like to point out at this time that Honorable Ferris of the Sixth Circuit Court in Cincinnati, Ohio, made comment pertaining to Defendant Rebecca Ferguson's memorandum, wherein he states that Ms. Acton displayed "ABERRANT BEHAVIOR". (Refer to Appendix A, pages 31-36. He apparently came to that false conclusion while making his decision based upon the clearly undeserved merit that Ms. Ferguson is/was a prosecutor, combined with his obvious preconceived notion that Ms. Acton is/was "crazy", just as Defendant Rebecca Ferguson alleges within her hearsay memorandum. Ms. Acton strongly objects to Honorable Ferris' presumption.

Defendant City Attorney John Petry, also a member of this elaborate conspiracy, actually entered into complicity and held a meeting in his office wherein Defendant Dave Daily and Defendant Police Chief Romeo were in attendance. Further, Defendant Wayne Pinkstaff clearly requested to keep abreast of the results of that particular meeting, wherein, the subject matter was pertaining to Defendant Parker-Hannifin Corporation and Ms. Acton's apparent agenda.

Defendant Judge "Bill" with-an-emergency-plan Dues included proof of this meeting among the other documents he used to put Ms. Acton away, on ward 53 of TVPS wherein the criminally insane are housed!

Furthermore, to add more insult to injury, Defendant Judge "Bill" Dues involved Defendant Preble County's

Board of Mental Health and arranged for a psychologist, Defendant Lori Marcellino, who had never even so much as met Ms. Acton, let alone personally evaluate Ms. Acton, to give false affidavit including sworn testimony wherein she echoed Defendant Police Chief Romeo's lies and fabrications, requesting Ms. Acton to be hospitalized at Defendant Twin Valley Psychiatric Systems at Dayton in Defendant Montgomery County.

Further, Defendant Judge "Bill" with-an-emergency-plan-to-protect-his/our-multi-million-dollar-money-making-tax-revenue-increasing-business-plan/deal Dues only considered testimony from psychologist, Lori Marcellino, when ORC 5122.11 on page 73 of Appendix I also requires a Medical Doctor opinion to legally hospitalize someone for involuntary evaluation.

Because she is expert, Defendant Lori Marcellino was fully aware of the potential for mental suffering, emotional stress, the inducing of Adjustment Disorder, not to mention the increased possibility of physical injury, rape, or even potential death, that Ms. Acton could receive resulting from this malicious fabrication to involuntarily hospitalize Ms. Acton in a state forensic hospital for the criminally insane.

If not for the acts of conspiracy and complicity to cover-up insurance fraud, the acts of conspiracy and complicity to cover-up corruption within Preble County and the City of Eaton, the acts of covering-up insurance fraud and corruption, the act to maliciously support the untruths that Ms. Acton was criminally insane, the acts of conspiracy and complicity to support the malicious untruth that Ms. Acton was criminally insane, the conspiracy, the act of entering into complicity, and the act to prevent Ms. Acton from appearing at the hearing before the Ohio Industrial Commission in April 2001, the conspiracy and the act of entering into complicity to illegally hospitalize Ms. Acton within a forensic hospital for the criminally insane, to act in such a way as to illegally hospitalize Ms. Acton in a forensic

hospital for the criminally insane, the conspiracy and the act of entering into complicity to illegally place Ms. Acton in physical and mental harm's way, the act to place Ms. Acton in physical and mental harm's way, Ms. Acton did indeed suffer injury, provable and commencing on or about March 8, 2001, by acts both independent and jointly with other defendants, acts committed by Defendant Chief Phillip Romeo, Defendant Dave Daily, Defendant John Petry, Defendant City of Eaton, Defendant Preble County, Defendant Sheriff Tom Hayes, Defendant Prosecutor Rebecca Ferguson, Defendant Parker-Hannifin Corporation, Defendant Wayne Pinkstaff, Defendant Jenny Haddux, Defendant Samaritan Behavioral Health, Defendant Dr. Lori Marcellino, and last be not least Defendant Judge Wilfred Dues with a huge plan to protect.

Ms. Acton was illegally detained on March 13, 2001. Ms. Acton had to reschedule her March 14th meeting in Columbus with a representative of the Ohio Ethics Commission, as well as her hearing before the Industrial Commission against Defendant Parker-Hannifin Corporation at the beginning of April, both while detained in a state hospital for the criminally insane.

To add further assault and injury, while detained within the jurisdiction of Defendant Montgomery County, Ms. Acton did not receive completed hearing from her date of detention, March 13, 2001, until April 5, 2001. Ms. Acton was effectively illegally incarcerated for three and a half weeks, because of the untrue and illegally documented witness testimony of fictitious symptoms, as well as expert diagnosis stemming from those illegal and untrue documented fictitiously witnessed symptoms, symptoms that would make it appear that Ms. Acton was criminally insane.

For Ms. Acton to be detained for three and a half weeks without a completed hearing by Defendant Montgomery County's Defendant Judge George Gounaris, is

yet another denial of legitimate due processes of ORC 5122.141 on pages 76-77 of Appendix I.

Are these denials of legitimate due process, by both Preble County jurisdiction and Montgomery County Jurisdiction, mentioned thus far, used to deny only Ms. Acton her Constitutional rights, or are these denials of Constitutional rights the norm for those who are allegedly criminally insane and in presumed need of involuntary hospitalization for evaluation?

If not for the blatant acts and conspiracies of those Defendants residing in Preble County as mentioned thus far, conspired and entered into complicity to independently and jointly, illegally act in such a way by each one of the Preble County residing defendants addressed thus far, Ms. Acton would not have been injured and therefore would not have suffered, provable and commencing on or about March 8, 2001, and continuing to this day.

With no assistance from any agent of Defendant Montgomery County; without any assistance from any agent of Defendant Twin Valley Psychiatric System of Dayton, Ohio, in Montgomery County, Ms. Acton was finally able to secure professional legal representation, on or about April 2, 2001, who requested the immediate completion of Ms. Acton's hearing, further threatening Judge Gounaris with the filing of a Writ of Habeas Corpus in the Federal Court.

Ms. Acton's hearing was then immediately completed. With no substantial proof of mental disorder warranting hospitalization, Judge Gounaris dismissed the case and then he expunged the case.

Now fearing to stay in the community of Preble County, Ms. Acton completed her driving training, obtained a Commercial Driver's License, secured a job with Schneider National Trucking, and effectively hid for nearly two years on the highways of this great country in an 80,000 pound

bright orange semi, occasionally hauling freight through Eaton, stopping to see her family, friends, and attend her home church.

Ms. Acton and Parker-Hannifin did have a hearing before the Industrial Commission. The claim was denied, However, Ms. Acton could then request an appeal hearing in the Court of Common Pleas in Preble County. Oh, what a hoot that would have been. No thanks! Ms. Acton was truly afraid to act on her right to appeal, afraid of what else Preble County would put her or her family through.

This Court has access to the complaint that Ms. Acton filed April 4, 2003. But what this court needs to be aware of is that Defendant Judge "Bill" Dues' long-term-money making-business-dream is now a thriving reality. As a matter of fact, in the recent March 22, 2005, issue of the Palladium-Item newspaper, Eaton City Manager, and former agent for *Daily and Hake Realtors, Inc.*, Dave *Daily*, gave comments concerning the business of Eaton.

Apparently, Eaton plans to annex 54 more acres of Eleanor *Hake* owned land from Preble County into the City of Eaton. Real estate business, Preble County Medical Center, and others of course, are planning to build a hospital at the site of the newly built, Judge Dues' planned Y.M.C.A. Dave *Daily* further stated, "But that's a lot of land to not put much on. Their long term plan is to do something bigger!"

Ms. Acton is presently employed at Trinity Missions of New Paris, Ohio, 7739 West U.S. 40, 937-437-2311. Administrator, Randy Blough, personally knows Eaton EMS Captain Marsha Stonecash, hence, he spoke with her pertaining to the potential hiring of Ms. Acton. Captain Stonecash gave a positive referral concerning Ms. Acton, who was then fingerprinted and employed on March 8, 2004.

And what about Parker-Hannifin? On November 3, 2004, the morning after the elections, a Greenville, Ohio

resident, Steve Nisonger, age 41, was smashed, severed in half, and dead at Defendant Eaton Parker-Hannifin Corporation. He was a solo truck driver and was smashed at the back of his own trailer. He was between it and the shipping/receiving docks. Possessing a commercial driver's license, Ms. Acton presumes the only way he could be smashed behind his own tractor-trailer is with some human OSHA violating help, because he surely couldn't have smashed himself, given the mechanics of hydraulic and air brakes.

According to the local paper Defendant Chief Phillip Romeo and Defendant Prosecutor Rebecca Ferguson secured the scene at Defendant Eaton's Parker-Hannifin until OSHA investigators came to the scene and began their investigation. (The Honor of this court may contact OSHA at 513-841-4132, 800-454-0404, or www.osha.gov, and enquire as to the case number 308367713 pertaining to this death.)

Ms. Acton's current physician is Dr Shafik Ahmad, MD. of Family Physicians of Huber Heights, Ohio, 5212 Brandt Pike, Suite C, 937-235-6331. He has been treating with Ms. Acton since April 2001 soon after Ms. Acton's release from TVPS in Dayton. Her current diagnosis is hypothyroidism; Adult ADD (314.00); Bi-Polar, Type 2, Hypo-manic-depressive (296.42); and Adjustment Disorder (309.9), some of which are influenced by both environmental stressors as well as genetics.

However, Adjustment Disorder (309.9) is the development of clinically significant emotional or behavioral symptoms in response to an identifiable psychosocial stressor or stressors.

Hence, Ms. Acton clearly had these diagnosis to one degree or another, provable and commencing on or March 8, 2001, however not "homicidal, suicidal, or delusional". Ms. Acton did absolutely possess a strong relationship with God

at that time, however, "strong religious beliefs" are not considered a legitimate symptom of mental disorder.

Dr. Shafik Ahmad prescribes 112 meq. Synthroid, 150 mg. Wellbutrin XL, 80 mg. Strattera, 400 mg. Seroquel and a low dosage of Lovastatin for cholesterol. Ms. Acton consults with Dr. Ahmad on a regular basis and stays current with blood analysis.

Ms. Acton is not currently homicidal, suicidal, and is not currently delusional. Ms. Acton does currently have a strong relationship with God of the Bible.

Ms. Acton can prove that she was not homicid, suicidal, and was not delusional on or about March 8, 2001. Ms. Acton did possess a strong relationship with God, both then and now.

REASONS FOR GRANTING THE WRIT

In conclusion, Ms. Acton was clearly the victim of several conspiracies that were intertwined and acted out by involved Defendants, both independent and jointly with one another. All designed and carried out to protect Defendant Judge Dues' money-making plan, in which all Defendants would prosper, either monetarily, or by public recognition, or by promotion, or a combination there of, by the blatant intentional demise of Ms. Acton; financially, emotionally, physically, and geographically.

Ms. Acton clearly suffered as a result of an outrageously manipulated legal system as it pertains to the alleged mentally ill. The Constitution, ordaining due process, was designed to prevent what happened to Ms. Acton, yet in Preble County, and continuing in Montgomery County Ms. Acton's rights were blatantly denied.

The Constitutional provision of due process was completely ignored by Judge Dues because it interfered with

"their long term plan", as well as by Judge Gounaris who clearly, because of obvious habit, and because he presumed Ms. Acton to be criminally insane and presumably not knowing or caring or even being aware of her rights.

Clearly Ms. Acton still has a heart to help people in general, but specifically the alleged mentally ill, but more clear is that Judge Dues' presumed heart for the youth of this community is over-shadowed by his/their greed for power, prestige and his/their long-time, long-term planned "paycheck".

(Aren't officials held to a longer statute of limitations when they intentionally conduct themselves illegally?)

CONCLUSION

For the foregoing reasons, the Writ for Certiorari should be granted.

Respectfully submitted,

Stephanie S. Acton Pro Se
July 4, 2005

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Eaton, Ohio 45320
937-456-3731

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

STEPHANIE S. ACTON,

Plaintiff-Appellant,

v. **ORDER**

CITY OF EATON; PREBLE COUNTY; REBECCA FERGUSON, Preble County Prosecutor; TOM HAYES, Director; WILFRED G. DUES, Preble County Court of Common Pleas; PREBLE COUNTY MEDICAL CENTER; MARK VOSLER; ALLEN FERGUSON; PARKER-HANNIFIN CORPORATION; WAYNE PINKSTAFF, Human Resources Manager; JENNY HADDUX, Insurance Specialist; SAMARITAN BEHAVIORAL HEALTH INC., LORI L. MARCELLINO; PREBLE COUNTY YOUTH FOUNDATION INC.; CHRISTOPHER B. WASHINGTON; TOM HAYES; LESLIE RENNER; PHILLIP ROMEO; DAVE DAILY; JOHN PETRY; PAT TAYLOR,

Defendant-Appellees.

Before: DAUGHTREY, COOK, and FARRIS, Circuit Judges.

Stephanie Acton, an Ohio citizen proceeding pro se, appeals a district court judgment dismissing her civil rights complaint filed pursuant to 42 U.S.C. 1983. Her appeal has

been referred to a panel of this court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, the panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary relief, Acton filed a complaint against twenty-two defendants raising claims under 1983 and asserting supplemental claims under Ohio law, each related to her involuntary detention and subsequent psychological evaluation. In response to the defendants' various motions to dismiss and motions for summary judgment, the district court dismissed each of Acton's federal claims against all of the defendants. The district court dismissed with prejudice the claims against Judge Wilfred Dues, Preble County Clerk of Courts Christopher Washington, and Preble County Prosecutor Rebecca Ferguson on the basis of absolute immunity. The district court dismissed with prejudice the claims against Tom Hayes, Leslie Renner, Phillip Romeo, Dave Daily, John Petry, Pat Taylor, Samaritan Behavioral Health, Lori Marcellino, Mark Vosler, (Harold) Allen Ferguson, and Preble County Youth Foundation on the grounds that Acton's claims were barred by the statute of limitations. The district court dismissed without prejudice Acton's claims against Parker-Hannifin Corporation (PHC), Wayne Pinkstaff, and Jenny Haddux for failing to state a claim upon which relief can be granted. The district court granted Preble County Medical Center's unopposed motion for summary judgment and dismissed with prejudice the claim against the City of Eaton. Acton filed a timely appeal.

Whether a district court properly dismissed a suit pursuant to Fed. R. Civ. P. 12(b)(6) is a question of law subject to de novo review. *Gahafer v. Ford Motor Co., 328 F.3d 859,861 (6th Cir. 2003).* The court must construe the complaint in the light most favorable to the plaintiff, accept all the factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of

her claims that would entitle her to relief. *Powell v. Jacor Communications Corporate, 320 F.3d 599, 601-02 (6th Cir. 2003).* This court reviews an order granting summary judgment de novo. *Toms v. Taft, 338 F.3d 519, 524 (6th Cir. 2003).* Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

Initially, we note that Acton does not argue that the district court erred by dismissing her claims against PHC, Wayne Pinkstaff, Jenny Haddux, and Preble County Medical Center, where the district court's judgment was not based upon the grounds of either immunity or the statute of limitations. Likewise, Acton does not argue that the district court erred when it dismissed Acton's claim against Christopher Washington on the basis of absolute immunity. Finally, Acton does not argue that the district court abused its discretion by declining to exercise supplemental jurisdiction over the state law claims. Issues raised in the district court but not on appeal are considered abandoned and not reviewable on appeal. *Enertech Elec.m Inc. V. Mahoning County Comm'rs, 85 F.3d 257, 259 (6th Cir. 1996).*

On appeal, Acton argues: (1) that Tom Hayes, Rebecca Ferguson, Phillip Romeo, and Judge Dues were not entitled to immunity; (2) that her claims were not barred by the statute of limitations; (3) that the district court cut short the sixty days she had been granted to ask for records from the defendants by dismissing her case, and (4) that the district court should not have dismissed the claims against the City of Eaton and the related defendants on the basis of the Soldiers and Sailors Civil Relief Act.

Because the district court did not rely upon immunity grounds in dismissing Acton's claims against Hayes and Romeo, this court need only address the district court's holding on immunity in relation to Judge Dues and Rebecca Ferguson. The district court properly concluded that Judge Dues is entitled to judicial immunity. A judge performing judicial functions is absolutely immune from suit seeking monetary damages. *Mireles v. Waco, 502 U.S. 9, 9-10 (1991).* A judge will not be immune from suit where: (1) the judge acts in a non-judicial capacity; or (2) the judge acts in the complete absence of all jurisdiction. Id. At 11-12. A judge acts in the complete absence of all jurisdiction only if a matter was clearly outside the court's subject matter jurisdiction. *King v. Love, 766 F.2d 962, 965 (6th Cir. 1985).* All of the alleged acts by Judge Dues are judicial functions exercised under proper jurisdictional authority, and thus, judge dues is entitled to absolute judicial immunity.

The district court also properly concluded that Rebecca Ferguson is entitled to absolute immunity to the extent that Acton bases her claim upon Ferguson's refusal to prosecute the alleged instance of fraud. A prosecutor is afforded absolute immunity for the decision not to prosecute. *Harrington v. Almy, 977 F.2d 37,41 (1st Cir. 1992).*

Acton argues that Ferguson is not entitled to imminity for the memorandum that she wrote to Chief Romeo describing Acton's aberrant behavior. Rather, the court determined that Acton had failed to produce any evidence contradicting Ferguson's affidavit, which stated that she took no part in the decision to seek Acton's detainment. The district court did not err in granting summary judgment to Rebecca Ferguson on this issue because Ferguson's memorandum, by itself, could not establish liability under 1983. See *Paul v. Davis, 424 U.S. 693, 711-12 (1976).*

The district court did not err in determining that a number of Acton's claims were barred by the statute of limitations. State statutes of limitations and tolling principles apply to determine the timeliness of claims asserted under 1983. *Wilson v. Garcia, 471 U.S. 261, 268-69 (1985).* For civil rights suits filed in Ohio under 1983, the statute of limitations is two years. Ohio Rev. Code Ann. 2305.10; *Browning v. Pendleton, 869,F.2d 989, 992 (6th Cir. 1989) (en banc).* Acton's claims accrued, at the very latest, on March 13, 2001, the date on which she was detained by court order. *See Collyer v. Darling, 98 F.3d 211, 220 (6th Cir. 1996).* Acton did not file her complaint until April 4, 2003, twenty-two days after the two-year statute of limitations had expired.

Acton argues that the statute of limitations should be tolled pursuant to Ohio Rev. Code Ann. 2305.16. Because Acton argues only that she was confined, not that she was of unsound mind, the tolling provision is inapposite. *See Ohio Rev. Code Ann. 2305.16; Fisher v. Ohio Univ., 589 N.E.2d 13, 16 (Ohio 1992).* Therefore, the district court properly determined that Acton's claims were barred by the statute of limitations.

For her third issue, Acton argues that the district court cut short her opportunity for discovery. We review a district court's decisions concerning discovery matters for abuse of discretion. *Lanier v. Bryant, 332 F.3d 999, 1006 (6th Cir. 2003).* Acton has not demonstrated that the district court's actions deprived her of information that would disclose material facts. See id. ("Nebulous assertions that more discovery time would have produced evidence to defeat summary judgment will be unavailing."). Therefore, the district court did not abuse its discretion.

Finally, Acton argues that the district court improperly dismissed the claims against the City of Eaton and related defendants under the Soldiers and Sailors Civil

Relief Act in dismissing these claims. Instead the court found the request for this alternative basis for relief moot. This argument lacks merit.

Accordingly, we affirm the district court's judgment. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

_____

Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
[Filed February 4, 2005]
LEONARD GREEN,
Clerk

Circuit Court No. 04-3095

STEPHANIE S. ACTON, PRO SE
Plaintiff-Appellant

vs.

CITY OF EATON; PREBLE COUNTY; REBECCA FERGUSON, Preble County Prosecutor; TOM HAYES, Director; WILFRED G. DUES, Preble County Court of Common Pleas; PREBLE COUNTY MEDICAL CENTER; MARK VOSLER; ALLEN FERGSON; PARKER-HANNIFIN CORPORATION; WAYNE PINKSTAFF, Human Resources Manager; JENNY HADDUX, Insurance Specialist; SAMARITAN BEHAVIORAL HEALTH, INC. LORI L. MARCELLINO; PREBLE COUNTY YOUTH FOUNDATION, INC.; CHRISTOPHER B. WASHINGTON; TOM HAYES; LESLIE RENNER; PHILLIP ROMEO; DAVE DAILY; JOHN PETRY; PAT TAYLOR
Defendants-Appellees.

No. 04-3095
ORDER

Plaintiff-Appellant, Stephanie Acton, has filed a petition for rehearing of his court's order of December 7, 2004, affirming the district court's judgment dismissing her civil rights suit.

Upon careful consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. Fed. R. App. P. 40(a).

The petition for rehearing is thus DENIED.

ENTERED BY ORDER OF THE COURT

Leonard Green, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
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RE: 04-3095
Acton vs. Eaton
District Court No. 03-00116

Enclosed is a copy of an order which was entered today in the above styled case.

Leonard Green, Clerk

Ms.) Michelle M. Davis
Case Manager

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

Case No. C-3- 03-116

STEPHANIE S. ACTON

Plaintiff,

vs.

Magistrate Judge
Michael R. Merz

THE CITY OF EATON, OHIO, et al

DECISION AND ORDER

This case is before the Court on the following Motions:

1. Motion of Defendants Parker-Hannifin Corp., Wayne Pinkstaff, and Jenny Haddux to dismiss or for a more definite statement (Doc. No. 51);
2. Plaintiff's Motion to Amend (Doc. No. 60);
3. Defendant Rebecca Ferguson's Motions for Summary Judgment (Doc. Nos. 61 & 63);
4. Defendant Preble County Medical Center's Motion for Summary Judgment (Doc. No. 64);
5. Defendant City of Eaton's Motion for a Final Appealable Order (Doc. No. 73);
6. Defendant Preble County Clerk of Court Christopher Washington's Motion to Dismiss (Doc. No. 72);
7. Defendant Preble County Sheriff Tom Hayes' Motion to Dismiss (Doc. No. 73);

8. Defendants Samaritan Behavioral Health, Inc, and Lori Marcellino's Motion for Summary Judgment (Doc. No. 73); and
9. Defendants Mark Vosler and Harold Ferguson's Motion for Summary Judgment (Doc. No. 76).

Despite notice of the requirements of Fed. R. Civ. P. 56 and of her obligation to respond to these Motions, Plaintiff has only responded to the Parker-Hannifin Motion to Dismiss (Doc. No. 59) and Defendant Rebecca Ferguson's Motion for Summary Judgment (Doc. No. 71).

The parties have unanimously consented to plenary magistrate judge jurisdiction under 28 U.S.C. 636(c) and the case has been referred on that basis (Doc. No. 52).

Motion to Dismiss Standard

The Motions to Dismiss (Doc. Nos. 51, 72, and 73) were made under Fed. R. Civ. P. 12(b)(6) whose purpose is to allow a defendant to test whether, as a matter of law, the plaintiff is entitled to legal relief even if everything alleged in the complaint is true. *Mayor v. Mylod*, 988 F. 2d 635, 638 (6th Cir. 1993), citing, *Nishiyama v. Dickson County Tennessee*, 814 F.2d 277, 279 (6th Cir. 1987). Put another way, "The purpose of a motion under Rule 12(b)(6) is to test the formal sufficiency of the statement of the claim for relief; it is not procedure for resolving a contest about the facts or merits of the case." Wright & Miller, Federal Practice and Procedure: Civil 2d 1356 at 294 (1990).

The test for dismissal under Fed. R. Civ. P. 12(b)(6) is a stringent one:

> [A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

Hartford Fire Ins. Co v. California, 509 US 764, 811, 113 S. Ct. 2891, 125 L. Ed. 2d 612 (1993), quoting *Conley v. Gibson*, 355 US 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957); *Neitzke v. Williams*, 490 US 319, 109 S. Ct. 1827, 104 L. Ed 338 (1989); *Hishon v. King & Spalding*, 467 US 69, 104 S. Ct. 229, 81 L. Ed. 2d 59(1984); *Monette v. Electronic Data Systems*, Inc., 90 F. 3d 1173, 1189 (6th cir. (1996). For purposes of the motion to dismiss, the complaint must be construed in the light most favorable to the plaintiff and its allegations taken as true. *Scheuer v. Rhodes*, 416 US. 232, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974); *Westlake v. Lucas*, 537 F. 2d 857 (6th Cir. (1976); *Craighead v. E.F. Hutton & Co.*, 899 F. 2d 485 (6th Cir. (1990). To survive a motion to dusmiss under Fed, R. Civ. P. 12(b)(6), "a . . . complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory." *Scheid v. Fanny Farmer Candy Shops, Inc.*, 859 F. 2d 434 (6th Cir (1988); followed *Allard v. Weitzman (In re DeLorean Motor Co.)*, 991 F. 2d 1236 (6th Cir 1990); *Columbia Natural Resources, Inc. v. Tatum*, 58 F. 3d 1101 (6th Cir 1995). The Court "need not accept as true legal conclusions or unwarranted factual inferences." *Morgan v. Church's Fried Chicken*, 829 F. 2d 10, 12 (6th Cir. 1987). Bare assertions of legal conclusions are not sufficient. *Lillard v. Shelby County Bd. Of Educ.*, 76 F. 3d 716, (6th Cir. 1996); *Sogevalor S. A. v. Penn Central Corp.*, 771 F. Supp. 890, 893 (S.D. Ohio 1991). It is only well-pleaded facts which are construed liberally in favor of the party opposing the motion to dismiss. Id., citing *Scheuer v. Rhodes*, 416 US. 232, 236, 94 S. Ct 1683, 40 L. Ed. 2d 90 (1974); see also Wright & Miller, Federal Practice And Procedure: Civil 2d 1357 at 311-318 (1990).

SUMMARY JUDGMENT STANDARD

Other Defendants have filed motions for summary judgment. Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56. On a motion for summary Judgment, the movant has the burden of showing that there exists no genuine issue of material fact, and the evidence, together with all inferences that can reasonably be drawn therefrom, must be read in the light most favorable to the party opposing the motion.. *Adickes v. S. H. Kress & Co.*, 398 US. 144, 157-59 (1970). Nevertheless, "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material fact. Anderson v. Liberty Lobby, Inc.*, 477 US 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986) (emphasis in original). Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to "secure the just, speedy and inexpensive determination of every action." *Celotex Corp. v. Catrett*, 477 US. 317, 327 (1986).

Read together, Liberty Lobby and Celotex stand for the proposition that a party may move for summary judgment asserting that the opposing party will not be able to produce sufficient evidence at trial to withstand a directed verdict motion (now known as a motion for judgment as a matter of

law. Fed R. Civ. P. 50). *Street v. Bradford & Co.*, 886 F. 2d 1472, 1478 (6th Cir. 1989). If, after sufficient time for discovery, the opposing party is unable to demonstrate that he or she can do so under the *Liberty Lobby* criteria, summary judgment is appropriate. Id. The opposing party must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electric Industrial Co., Ltd v. Zenith Radio Corp.*, 475 US. 574, 586 (1986). "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Liberty Lobby*, 477 US. At 249-50, 106 S. Ct. at 2510-11 (citations omitted). "The mere possibility of a factual dispute is not enough." *Mitchell v. Toledo Hosp.*, 964 F. 2d 577, 582 (6th Cir. 1992)(quoting *Gregg v. Allen-Bradley Co.*, 801 F. 2d 859, 863 (6th Cir. 1986). Therefore a court must make a preliminary assessment of the evidence, in order to decide whether the plaintiff's evidence concerns a material issue and is more than de minimis. *Hartsel v. Keys*, 87 F. 3d 795(6th Cir. 1996). "On summary judgment," moreover, "the inferences to be drawn from the underlying facts... must be viewed in the light most favorable to the party opposing the motion." *United States v. Diebold, Inc.*, 369 US. 654,655,82 S. Ct. 993, 994, 8 L. Ed. 2d 176 (1962). Thus, "the judge's function is not himself to weigh the evidence and determine the truth of matter but to determine whether there is a genuine issue for trial," *Liberty Lobby*, 477 US at 249, 106 S. Ct. at 2510.

(The moving party always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact.)

Celotex, 477 US at 323; see also, *Boretti v. Wiscomb*, 930 F. 2d 1150,1156 (6th Cir. 1991) (citation omitted). If the moving party meets this burden, the nonmoving party must go beyond the pleadings to show that there is a genuine issue for trial. *Matsushita*, 475 US at 587; *Martin v. Ohio Turnpike Comm'n.*, 968 F. 2d 606, (6th Cir.,1992), cert. Denied, 506 US.1054,113 S. Ct. 979, 122 L.Ed. 2d 133 (1993).

In ruling on a motion for summary judgment (in other words, determining whether there is a genuine issue of material fact), "[a] district court is not . . . obligated to wade through and search the entire record for some specific facts that might support the nonmoving party's claim." *Interroyal Corp. v. Sponseller*, 889 F. 2d 108,111 (6th Cir. 1989), cert. Denied, 494 US 1091 (1990). Thus, in determining whether a genuine issue of material facts exists on a particular issue, a court is entitled to rely only upon those portions of the verified pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits submitted, specifically called to is attention by the parties.

The facts set forth in this Decision are admitted or established by evidence competent under Fed. R. Civ. P. 56(e) and not controverted by opposing competent evidence.

Allegations of the Complaint

Plaintiff brought this action *pro se* against twenty-two Defendants (Complaint, Doc. No.1). She purports to bring the claim under 42 U.S.C. 1983 and to assert supplemental claims under Ohio law (Complaint, 1). She claims that Defendants acted intentionally, maliciously, or with deliberate indifference to her rights (Id., 4) and that they acted under color of state law (Id., 8).

Allegations of the Complaint

Plaintiff alleges that on February 7, 2001, she met with Eaton City Manager Dave Daily to inform him of corruption in a particular (unnamed) department of the City (Id., 9). Later that day she went to the private photography business of Eaton Mayor Pat Taylor both to get a photograph restored and to inform him of the same things (Id.). Although Mayor Taylor said he could not get his own personal issues dealt with by the Preble County Court system, he threatened to have the City take Ms. Acton through the same system (Id., 14).

At a public meeting of the Preble City Council on February 20, 2001, she made a statement admitting to her own participation in an alleged insurance fraud involving Defendant Parker-Hannifin and Preble County Health Commissioner Mark Vosler (Id., 17) and other public officials who allegedly failed to investigate the fraud.

On March 8, 2001, two employees of Samaritan Counseling Alternatives appeared at her home and advised her that Sheriff Tom Hayes, Eaton Police Chief Romeo, and Wilfred Dues were concerned about her mental health. She alleges that the three of them conspired "for the purpose of creating the perception that I was ill with mental disorder, or combination there of [sic] to the degree of being homicidal, suicidal, delusional, and possessing strong religious beliefs." (Id.,27). Instead of accepting a counseling appointment at Samaritan Counseling Alternatives, she made an appointment at a Christian mental health agency, Christos Counseling, in Vandalia, Ohio (in Montgomery as opposed to Preble County).

Allegations of the Complaint

On March 13, 2001, Judge Dues, the Probate Judge of Preble County, issued an order for Plaintiff's detention at Twin Valley Psychiatric in Dayton (Id. 30). She was taken into custody with Chief Romeo personally participating (Id. 39). At an on-site hearing with Montgomery County Probate Judge George Gounaris, she requested to have that evaluation done on referral by Defendant Dr. Allen Ferguson, but he declined to become involved (Id. 57-60. Dr. Lori Marcellino, a psychiatrist with Samaritan Counseling Services, is accused of rendering an opinion on Plaintiff's mental health of which Judge Dues used to justify the confinement, but without Dr. Marcellino ever evaluating Plaintiff. (Id. 63). At the second hearing on April 5, 2001, Judge Gounaris ordered the case dismissed (Id. 82).

The complaint questions at length the documents assertedly reviewed by Judge Dues before issuing the temporary detention order (Id., 95-113). She then quotes at length from a newspaper article in the Register-Herald of March 19, 2003, about the new Preble County Medical Center (Id.,114-119). In 120 through 128, she alleges that two different forms signed by Defendant Dr. Mark Vosler were submitted by Parker-Hannifin with respect to a Workers' Compensation claim.

Having set forth the factual basis of her claims, Plaintiff proceeds to plead three separate causes of action. The first is a 1983 claim solely against Judge Dues (Id.,129-1340. The second solely against Dr. Lori Marcellino, also under 1983, for making the allegedly false affidavit on the basis of which Judge Dues detained Ms. Acton. In the third cause of action, Plaintiff alleges that the Defendants conspired to deprive Plaintiff of her due process rights and to cause her to suffer cruel and unusual punishment (Id., 140). She alleges this claim seeks relief under 42 U.S.C. 1983 for violations of the First and Fourth Amendments (Id. 141). In 143-145, the Defendants defamed her. She seeks $12 million

in compensatory damages and another $12 million in punitive damages (Id., 147).

The Pending Motions

1.Parker-Hannifin Corp. Motion to Dismiss (Doc. No. 51).

Parker-Hannifin, Wayne Pinkstaff, and Jenny Haddux move to dismiss on the grounds that they are not state actors. Only persons acting under the color of state law can be liable under 42 U.S.C. 1983.

However, Plaintiff does allege that these three Defendants conspired with state actors to deprive her of her constitutional rights. A civil conspiracy is a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is agreement among the parties. *Hampton v. Hanrahan*, 600 F. 2d 600, 620-21 97th Cir. 1979). *rev'd in part on other grounds*, 446 US. 754, 100 S. Ct. 1987, 64 L. Ed.2d 670 (1980). Liability attaches for a civil conspiracy when a plaintiff can prove that two or more defendants agreed to injure another by unlawful action and committed an overt act in furtherance of the conspiracy. *Michigan Paytel Joint Venture v. City of Detroit,* 287 F. 3d 527,541 (6th Cir. 2002).

The difficulty with Plaintiff's Complaint is that it makes very general conspiracy allegation: all the Defendants are alleged to have conspired together to deprive her of her rights. Conspiracy claims must be pled with some degree of specificity; vague and conclusory allegations unsupported by material facts will not be sufficient to state a claim under 42 U. S. C. 1983. *Gutierrez v. Lynch*, 826 F. 2d 1534, 1538 (6th Cir. 1987), citing *Jaco v. Bloechle*, 739 F. 2d 239, 245 (6th Cir. 1984); *Polur v. Raffe*, 912 F. 2d 52, 56 (2d Cir. 1990);

Applegate V. Top Associates, Inc., 425 F. 2d 92 (2d Cir. 1970). The only connection alleged between these three Defendants is that the certificates of which Plaintiff complains were both signed by Dr. Mark Vosler as a physician and he is alleged to have various connections with the other Defendants who are alleged to be "connected" with one another.

In response to this Motion to Dismiss, Plaintiff does not provide any specific allegations of conspiracy by any of these Defendants with any of the state actors. Instead, she refers to various pages from hundreds of pages of documents she submitted to the Court on July 29, 2003. The pages she references do not show anything about a conspiracy among the Defendants.

As to these three Defendants, the Complaint fails to state a claim upon which relief can be granted and will be dismissed without prejudice on that basis. The alternative motion for definite statement is denied.

2.Rebecca Ferguson's Motion for Summary Judgment (Doc. Nos. 61 and 63).

Because Defendant Ferguson's Amended Motion for Summary Judgment (Doc. 63), replaces her original Motion (Doc. No. 61). The original Motion is DENIED AS MOOT.

Defendant Ferguson seeks summary judgment on two basis: that she did not conspire with anyone to have Plaintiff detained for mental status evaluation and that she is entitled to immunity for her decision not to prosecute Parker-Hannifin for what Plaintiff alleges is insurance fraud.

With respect to Ms. Ferguson's reporting to Chief Romeo facts observed by her staff which might lead a

reasonable person to question Plaintiff's mental stability, this reporting of observations does not give rise to any liability. Ms. Ferguson avers by Affidavit that she took no part in the decision to seek detainment and Plaintiff has produced no contrary testimony. The sole basis for finding her liable, then, would be reporting the observed facts. Such reports do not give rise to liability under 42 U.S.C. 1983 in the absence of some proof that they are part of an unlawful conspiracy. *Paul v. Davis*, 424 US. 693, 96 S. Ct. 1155, 47 L. Ed.2d 405 (1976).

Acts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the State, are entitled to the protections of absolute immunity. *Imbler v. Pachtman*, 424 US. 409, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976); *Burns v. Reed*, 500 US. 478,111 S. Ct 1934, 114 L. Ed. 2d 547 (1991); *Buckley v. Fitzsimmons*, 509 US. 259, 113 S. Ct. 2606, 125 L.Ed. 2d 209 (1993). This absolute immunity does not extend to investigatory activity, advising police, or personnel matters. *Burns*. It does apply to presenting allegedly false or defamatory testimony or making false or defamatory statements in judicial proceedings. *Burns*. Absolute immunity applies to professional evaluation of evidence assembled by the police. *Buckley*.

In this case, Plaintiff appears to allege Ms. Ferguson violated Plaintiff's constitutional rights by not prosecuting Parker-Hannifin. If the decision to prosecute someone is protected by absolute immunity, a fortiori the decision not to bring criminal charges is likewise protected.

Therefore, Defendant Ferguson's Motion for Summary Judgment (Doc. No. 63) is GRANTED.

The Pending Motions

3.Preble County Medical Center's Motion for Summary Judgment (Doc. No. 64).

Preble County Medical Center's Motion for Summary Judgment establishes that it is a real estate partnership which, until 1998, owned a building in which several of the indivisual Defendants practiced medicine, but that it never employed any of them. Plaintiff offers no contrary evidence.

Upon that state of facts, Preble County Medical Center's Motion for Summary Judgment is GRANTED.

4.Christopher Washington's Motion to Dismiss (Doc. No. 72).

Defendant Christopher Washington is the Preble County Clerk of Courts. Although he is a named Defendant, there are no allegations against Mr. Washington in the Complaint and Plaintiff has not responed to the Motion. Presumably he was sued because it was his duty to journalize whatever orders Judge Dues may have entered in this matter. As such, he is absolutely immune from any liability, *Foster v. Walsh*, 864 F. 2d 416 (6th nCir 1988); *Denman v. Leedy*, 479 2d 1097 (6th Cir. 1973). Defendant Washington's Motion to Dismiss is GRANTED. Because the basis is his immunity, the dismissal will be with prejudice.

5.Sheriff Tom Hayes' Motion to Dismiss (Doc. No. 73).

Preble County Sheriff Hayes moves to dismiss on grounds the Complaint does not state a claim for relief against him. As noted above, the only claim which involves all the Defendants is the third cause of action for conspiracy. The allegations are as general and conclusory as

to Sheriff Hayes as they are as to the three Parker-Hannifin Defendants.

Sheriff Hayes also seeks dismissal on statute of limitations grounds since the Complaint in this case was not filed for more than two years after it accrued. The ststute of limitations under Ohio law fir actions brought puruant to 42 U.S.C. 1983 is two years. Ohio Revised Code 2305.10. *Browning v. Pendleton*, 869 F. 2d 989 (6th Cir. 1989)(en banc).

Plaintiff claims the statute was toiled during the period she was confined at Twin Valley, March 13-April5, 2001. This Court believes she misinterpreted Ohio Revised Code 2305.16. She was confined there for an evaluation of her mental status and never found to have been of unsound mind. In fact, as one of the Defendants pointed out, if Plaintiff could obtain the benefit of 2305.16 by claiming to have been of unsound mind, she would thereby be admitting that there was some basis for having her detained for evaluation, whereas her theory throughout seems to be that the mental illness claims were trumped up in retaliation for her whistle-blowing activities.

Sheriff Hayes' Motion to Dismiss is GRANTED. Because the 1983 claim is barred by the statute of limitations, the, the Complaint will be dismissed as to Sheriff Hayes with prejudice

6.Defendants Samaritan Behavioral Health and Lori Marcellino's Motion for Summary Judgment (Doc. No. 75).

Defendants Samaritan Behavioral Health., and Dr. Lori Marcellino seek summary judgment on the basis of the statute of limitations. Since any causes of actions against

them accrued at the same time as the claims against Sheriff Hayes, they are entitled to judgment on the same basis.

7.Defendants Mark Vosler and Harold Ferguson's Motion for Summary Judgment (Doc. No. 76).

Defendants Mark Vosler and Harold Ferguson also seek dismissal on the basis of the statute of limitations. Since any causes of action against them accrued at the same time as the claims against Sheriff Hayes, they are entitled to judgment on the same basis.

8.Plaintiff's Motion to Amend (Doc. No. 60).

Plaintiff has moved to amend the Complaint, but the proposed amended complaint merely adds dozens of new Defendants without adding any allegations against the existing Defendants which would permit the case to survive a motion to dismiss or for summary judgment. The Motion to Amend is DENIED.

Defendant Preble County Youth Foundation, Inc., has filed answer) Doc. No. 25) raising, interalia, the defenses that the Complaint does not state a claim against it and that any 1983 claims would be barred by the statute of limitations. While this Defendant has not moved to dismiss of for summary judgment, it is entitled to summary judgment on the basis of the statute of limitations which the Court hereby GRANTS, *sue sponte*.

Because this Decision and Order will result in a final judgment, the City of Eaton's Motion under Rule 54 (Doc. No. 69) is MOOT.

The Pending Motions

All three causes of action pled by Plaintiff purportedly under 42 U.S.C.1983 and all such claims are being dismissed with prejudice. However, Plaintiff did advert to supplemental jurisdiction and has claimed defamation, albeit not in a separate claim for relief. Generally, if federal claims are dismissed before trial, the state claims should be dismissed as well. *Landefeld v. Marion General Hospital, Inc.*, 994 F. 2d 1178, 1182 (6th Cir. 1993); *Taylor v. First of America Bank-Wayne*, 973 F. 2d 1284 (6th Cir. 1992); *Wolotsky v. Huhn*, 960 F. 2d 1331, 1338 (6th Cir. 1992). Any state law claims made by Plaintiff shall be dismissed without prejudice under 28 U.S.C. 1367.

Conclusion

The Clerk shall enter judgment against the Plaintiff and in favor of the Defendants, dismissing the Complaint without prejudice as to Defendants Twin Valley Psychiatric/Behavioral Healthcare, Parker-Hannifin, Wayne Pinkstaff, and Jenny Haddux and with prejudice as to Defendants Wilfred Dues, George Gounaris, Dan Foley, Michael Holz, City of Eaton, Leslie Renner, Phillip Romeo, Dave Daily, John Petry, Pat Talor, Rebecca Ferguson, Preble County Medical Center, Christopher Washington, Tom Hayes, Samaritan Behavioral Health, Inc., Lori Marcellino, Mark Vosler, Harold Allen Ferguson, and Preble County Youth Foundation, Inc.

November 28, 2003.

S/Michael R. Merz
United States Magistrate Judge

ORDERS ON MOTIONS

U.S. DISTRICT COURT [Live]
LIVE- U.S. District Court, Southern District of Ohio

Notice of Electronic Filing

The following transactions was received: from mm1, on 11/28/2003 at 1:41 PM ES; from gh1, entered at 2:49 PM EST and filed on 11/28/2003

Case Name: Acton v. City of Eaton, Ohio et al
Case Number: 3:03-cv-116
Filer:
Document Number: 87

Docket Text:
Notation ORDER finding as moot [86] Motion for Judgment as a Matter of Law, by Judge Michael R. Merz on 11/28/2003. (mm1); ORDER granting [51] Motion to Dismiss, denying [51] Motion for More Definite Statement, denying [60] Motion to Amend/Correct, denying as moot [61] Motion for Summary Judgment, denying as moot [63] Motion for Summary Judgment, granting [64] Motion for Summary Judgment, finding as moot [69] Motion for Order to, granting [72] Motion to Dismiss, granting [73] Motion to Dismiss, granting [75] Motion for Summary Judgment, granting [76] Motion for Summary Judgment. Signed by Judge Michael R. Merz on 11/28/2003. (gh1,)

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename: n/a

ORDERS ON MOTIONS

Electronic document Stamp:
{STAMPdcecfStamp_ID1040326259[Date=11/28/2003][File Number=859350][1f823c28361a97921cdfd2c985ac67f7bf8c dc743c480bcb3f5144984fc57ad5afbl8b18328331cace8d947e 34d4c4f3db6ef5f6c87744625324acc7f84051]]

3:03-cv-116 Notice will be electronically mailed to:

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ORDERS ON MOTIONS

3:03-cv-116 Notice will not be electronically mailed to:

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APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

STEPHANIE S.ACTON — Case No. C-3-03-116

Plaintiff — Magistrate Judge Michael R. Merz

Vs.

THE CITY OF EATON, OHIO, et al.,

Defendants.

ORDER GRANTING PLAINTIFF'S REQUEST FOR EXTENSION OF TIME

This case is before the Court on Plaintiff's Request of Extension of Time (Doc. No. 80) which appears to seek additional time for Defendants to produce medical or other records to Mark Schumacher in response to his requests for those documents under authorizations for release signed by Plaintiff. Assuming that is indeed the relief requested by Plaintiff, it is GRANTED. This extension does not affect any of the pending motions to dismiss or for summary judgment as Plaintiff has not requested additional time to respond to those motions.

October 9, 2003

S/ Michael R. Merz
United States Magistrate Judge

ORDERS ON MOTIONS

U. S. District Court [Live]
LIVE- U. S. District Court, Southern District of Ohio

Notice of Electronic Filing

The following transaction was received from gh1, entered on 10/9/2003 at 5:00 PM EDT and filed on 10/9/2003

Case Name: Acton v. City of Eaton. Ohio. Et al
Case Number: 3:03-cv-116
Filer:
Document Number: 81

Docket Text: ORDER granting [80] Motion for Extension of Time to File Response/Reply. Signed by Judge Michael R. Merz on 10/09/03. (gh1)

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename: n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1040326259[Date=10/9/2003] [FileNumber=39631-0]
[066b88dbbb5891d52cbc5066388fcabl899a84c694ebcb3e65 fd2914886739991821 44afc89e62af5ED58425BD86229E777 1478BBC66F9FDA14493E3A774EB5]]

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ORDERS ON MOTIONS CONTINUED

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APPENDIX E

AMERICAN BAR ASSOCIATION

MOLEL CODE OF JUDICIAL CONDUCT

Canon 3
(in part)

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities, The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it.A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

Canon 3 Continued

B. Adjudicative Responsibilities

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

Commentary: " . . . A judge must be alert to avoid behavior that may be perceived as prejudicial."

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socio-economic status, against parties, witnesses, counsel or others. This Section 3B(6) goes not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation socioeconomic status, or other similar factors, are issues in the proceeding.

Canon 3 Continued

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law...

D. Disciplinary Responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct [substitute correct title if the applicable rules of lawyer conduct have a different title] should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct [substitute correct title if the applicable rules of lawyer conduct have a different title] that raises a substantial question as to the lawyer's honesty,

trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

E. Disqualification

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

APPENDIX F

MODEL RULES OF PROFESSIONAL CONDUCT

(in part)

Rule 3.6 Trial Publicity

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonable should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

Rule 3.8 Special Responsibilities of a Prosecutor

(f) " . . ., refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

APPENDIX G

Federal Rules of Civil Procedure

V. Depositions and Discovery> Rule 34

Rule 34. Production of Documents and Things and Enrty upon Land for Inspection and Other Purposes

(a) Scope.
Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phone records, and other data compilation.

(b) Procedure.
The request shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularit5y. The request shall specify a reasonable time, place, manner of making the inspection and performing the related acts. Without leave of court or written stipulation, a request may not be served before the time specified in Rule 26(d).tions from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit enrty upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designed object or operation thereon, within the scope of Rule 26 (b).

The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37.

APPENDIX H

Federal Rules of Civil Procedure

V. Depositions and Discovery> Rule 37.

Rule 37 Failure to Make or Cooperate in Discovery; Sanctions.

(a) Motion for Order Compelling Disclosure or Discovery.

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

(1) Appropriate Court.

An application for an order to a part5y shall be made to the court in which the action is pending. An application for an order to a person whom is not a party shall be made to the court in the district where the discovery is being, or is to be, taken.

(2) Motion.

(a) If a party fails to make a disclosure required by Rule 26 (a), any other party may move to compel disclosure and for appropriate sanctions. The motion must include a certificate that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

(b) If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation

under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.u

APPENDIX I

OHIO REVISED CODE

CHAPTER 5122

Hospitalization of Mentally Ill

Judicial Hospitalization

Section

5122.11	Judicial hospitalization; affidavit; temporary detention order.
5122.12	Notice of hearing
5122.13	Investigation by court
5122.14	Pre-hearing medical examination
5122.141	Hearing to determine if person is mentally ill subject to hospitalization; continuance; discharge; interim order; waiver of hearing.
5122.15	Full hearing; ninety-day order; disposition of respondent
5122.16	Hospitalization to federal facility
5122.17	Temporary detention
5122.18	Notice of hospitalization
5122.19	Medical examination after admission

5122.11 Judicial hospitalization; affidavit; temporary detention order

Proceedings for the hospitalization of a person pursuant to sections 5122.11 to 5122.15 of the ORC shall be commenced by the filing of an affidavit in the manner and form prescribed by the department of mental health, by any person or persons with the court, either on reliable information or actual knowledge, whichever is determined to be proper by the court. This section does not apply to the hospitalization of a person pursuant to section 2945.39, 2945.40, 2945.401, or 2945.402 of the ORC.

The affidavit shall contain an allegation setting forth the specific category or categories under division (B) of section 5122.01 of the ORC upon which the jurisdiction of the court is based and a statement of alleged facts sufficient to indicate probable cause to believe that the person is a mentally ill person subject to hospitalization by court order. The affidavit may require that the affidavit be accompanied, by a certificate of a psychiatrist, or a certificate signed by a licensed clinical psychologist and a certificate signed by a licensed physician stating that the person who issued the certificate has examined the person and is of the opinion that the person is a mentally ill person subject to hospitalization by court order, or shall be accompanied by a written statement by the applicant, under oath, that the person has refused to submit to an examination by a psychiatrist, or by a licensed clinical psychologist and a licensed physician.

Upon receipt of the affidavit, if a judge of he court or a referee who is an attorney at law appointed by the court has probable cause to believe that the person named in the affidavit is a mentally ill person subject to hospitalization by court order, the judge or referee may issue a temporary order of detention ordering any health or police officer or sheriff to take into custody and transport the person to a hospital or other place designated in section 5122.17 of the ORC, or may set the matter for further hearing.

5122.11 Continued (in part)

The person may be observed and treated until the hearing provided for in section 5122.141 of the ORC. If no such hearing is held, the person may be observed and treated until the hearing provided for in section 5122.15 of the ORC.

Constitutional issues

1. In an involuntary civil commitment proceeding undertaken pursuant to ORC 5122.15, the due process clause of the US Constitution Amendment 14, requires that individuals subject to such proceedings be advised of their right to be represented by counsel retained by them, or if they are unable to afford counsel that counsel will be appointed for them at public expense; if such individuals are incapable, at the time, of understanding their right to counsel in such proceedings, the probate court shall appoint counsel to represent each indigent person who is alleged to be mentally ill; such right to be represented by counsel must be made available at the earliest stage of the proceedings commensurate with the individual's need for a timely preparation of a defense or advancement of an argument for alternative modes of treatment, preferably upon the filing of an affidavit in probate court under ORC 5122.11. In re Fisher (Ohio 1974) 39 Ohio St.2d 71, 313 N.E.2d 851, 68 O.O.2d 43.

5122.12 Notice of hearing (in part)

After receipt of the affidavit required by section 5122.11 of the ORC, the court shall cause written notice by mail or otherwise of any hearing as the court directs to be given to the following persons:

(A) The Respondent;

(B) The respondent's legal guardian, if any, the respondent's spouse, if any, and the respondent's parents, if the respondent is a minor, if these persons' addresses are known to the court or can be obtained through exercise of reasonable diligence;

(C) The person who filed the affidavit;

(D) Any one person designated by the respondent; but if the respondent does not make a selection, the notice shall be sent to the adult next of kin other than the person who filed the affidavit if that person's address is known to the court or can be obtained through exercise of reasonable diligence;

(E) The respondent's counsel;

(F) The director, chief clinical officer, or the respective designee of the hospital, board, agency, or facility to which the person has been committed;

(G) The board of alcohol, drug addiction, and mental health services serving the respondent's county of residence or an agency the board designates.

Any person entitled to notice under this section, with exception of the respondent, may waive the notice.

A copy of the affidavit and the temporary order of detention shall be served with the notice to the parties and to the respondent's counsel, if counsel has been appointed or retained.

5122.14 Pre-hearing medical examination (in part)

Immediately after the acceptance of an affidavit required under section 5122.11 of the ORC, the court may appoint a psychiatrist, or a licensed clinical psychologist and a licensed physician to examine the respondent, and at the first hearing held pursuant to 5122.141 of the ORC, such a psychiatrist, or licensed psychologist and licensed physician, shall report to the court his findings as to the mental condition of respondent, and his need for custody, care, or treatment in a mental hospital. The court may accept as evidence the written report of a psychiatrist, or the written report of a licensed clinical psychologist and a licensed physician, designated by the board of alcohol, drug addiction, and mental health services as the report and findings referred to in this section.

The examination, if possible, shall be held at a hospital or other medical facility, at the home of the respondent, or at any suitable place least likely to have a harmful effect on the respondent's health.

The court shall prior to a hearing under section 5122.141 or 5122.15 of the ORC release a copy of the report to the respondent's counsel.

5122.141 Hearing to determine if a person is mentally ill subject to hospitalization; continuance; discharge; interim order; waiver of hearing

(A) A respondent who is involuntarily placed in a hospital or other place as designated in section 5122.10 or 5122.17 of the ORC, or with respect to whom proceedings have been instituted under section 5122.11 of the ORC, shall be afforded a hearing to determine whether or not the respondent is a mentally ill person subject to hospitalization by court order.

The hearing shall be conducted pursuant to section 5122.15 of the ORC.

(B) The hearing shall be conducted within five court days from the day on which the respondent is detained or an affidavit is filed, whichever occurs first, in a physical setting not likely to have a harmful effect on the respondent, and may be conducted in a hospital in or out of the county. On the motion of the respondent, his counsel, the chief clinical office, or on its own motion, and for good cause shown, the court may order a continuance of the hearing. The continuance may be for no more than ten days from the day on which the respondent is detained or on which an affidavit is filed, whichever occurs first. Failure to conduct the hearing within this time shall affect an immediate discharge of the respondent. If the proceedings are not reinstituted within thirty days, all records of the proceedings shall be expunged.

(C) If the court does not find that the respondent is a mentally ill person subject to hospitalization by court order, it shall order his immediate discharge, and shall expunge all record of the proceedings during this period.

APPENDIX J

Miscellaneous Labor Provisions
(in part)

Section 4113.52 Employee to report violations of state or federal law: retaliatory conduct prohibited.

(A)(1)(a) If an employee becomes aware in the course of his employment of a violation of any state or federal statute or any ordinance or regulation of a political subdivision that his employer has authority to correct, and the employee reasonably believes that the violation either is a criminal offense that is likely to cause an imminent risk of physical harm to persons or a hazard to public health or safety or is a felony, the employee orally shall notify his supervisor or other responsible officer of his employer of the violation and subsequently shall file with that supervisor or officer a written report that provides sufficient detail to identify and describe the violation. If the employer does not correct the violation or make a reasonable and good faith effort to correct the violation within twenty-four hours after the oral notification or the receipt of the report, whichever is earlier, the employee may file a written report that provides sufficient detail to identify and describe the violation with the prosecuting authority of the county or municipal corporation where the violation occurred, with a peace officer, with the inspector general if the violation is within his jurisdiction, or with any other appropriate public official or agency that has regulatory authority over the employer and the industry, trade, or business in which he is engaged.

(b) If an employee makes a report under division (A)(1)(a) of this section, the employer, within twenty-four hours after the oral notification was made or the report was received or by the close of business on the next regular business day following the day on which the oral notification was made or the report was received, whichever is later, shall notify the employee, in writing, of any effort of the employer to correct the alleged violation or hazard or of the absence of the alleged violation nor hazard.

(3) If an employee becomes aware in the course of his employment of a violation of Chapter 3704., 3734.,6109., or 6111. of the Revised Code that is a criminal offense, the employee directly may notify, either orally or in writing, any appropriate public official or agency that has regulatory authority over the employer and the industry, trade, or business in which he is engaged.

(B) Except as otherwise provided in division (C) of this section, no employer shall take any disciplinary action against an employee for making any report authorized by division (A)(1) or (2) of this section, or as a result of the employee's having made any inquiry or taken any other action to ensure the accuracy of any information reported under either such division. No employer shall take any disciplinary or retaliatory action against an employee for making any report authorized by division (A)(3) if this section if the employee made a reasonable and good faith effort to determine the accuracy of any information so reported, or as a result of the employee's having made any inquiry or taken any other action to ensure the accuracy of any information reported under that division. For the purposes of this division, disciplinary or retaliatory action by the employer includes, without limitation, doing any of the following:

(1) Removing or suspending the employee from employment;
(2) Withholding from employee salary increases or employee benefits to which the employee is otherwise entitled;
(3) Transferring or reassigning the employee;
(4) Denying the employee a promotion that otherwise would have been received;
(5) Reducing the employee in pay or position

(D) An employee shall make a reasonable and good faith effort to determine the accuracy of any information reported under division (A)(1) or (2) of this section. If the employee who makes a report under either division fails to make such an effort, he may be subject to disciplinary action by his employer, including suspension or removal, for reporting information without a reasonable basis to do so under division (A)(1) or (2) of this section.

Supreme Court, U.S.
FILED
AUG 4 - 2005
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NO. 05-63

IN THE
Supreme Court of the United States

STEPHANIE S. ACTON, Petitioner,

v.

CITY OF EATON, OHIO, et al., Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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Samaritan Behavioral Health, Inc.
and Dr. Lori L. Marcellino

QUESTIONS PRESENTED FOR REVIEW

The Petitioner sets forth an eleven (11) page narrative devoid of any articulable issue presented for this Court's review. The following question more appropriately frames the issue which relates to Respondents Lori Marcellino, Psy.D. ("Dr. Marcellino") and Samaritan Behavioral Health, Inc. ("Samaritan"): Whether the Sixth Circuit Court of Appeals properly affirmed the District Court's award of summary judgment in favor of Dr. Marcellino and Samaritan on the grounds that Ms. Acton's claims were barred by the applicable two year Statute of Limitations?

PARTIES TO THE PROCEEDING

The petition accurately lists the parties to this proceeding.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 1

A. Procedural Posture 1

B. Statement of Facts 2

C. Reasons for Denying the Petition 3

D. Conclusion 5

TABLE OF AUTHORITIES

CASES

Browning v. Pendleton, 869 F. 2d 989 (6th Cir. 1989) 4

Fisher v. Ohio University, 63 Ohio St. 3d 484 (1992) 4

Hardin v. Straub, 490 U.S. 536 (1983) 3

Hill v. Sciarotta, 140 F.3d 220 (6th Cir. 1998) 4

Wilson v. Garcia, 471 U.S. 261 (1985) 3

STATUTES

42 U.S.C. § 1983. ..... 1, 3, 4

Ohio Rev. Code § 2305.10 ..... 3, 4

Ohio Rev. Code § 2305.11. 4

Ohio Rev. Code § 2305.16. ..... 2, 4

STATEMENT OF THE CASE

A. Procedural Posture

Contrary to the contention of the Petitioner, Ms. Acton, this action does not involve a county-wide conspiracy to deprive Ms. Acton of her constitutional rights. Rather, it involves the failure of the Petitioner to timely file her claims within the applicable statute of limitations.

On or about April 4, 2003, Ms. Acton filed her Complaint against Dr. Marcellino and Samaritan and twenty other individuals and entities. (Complaint). In her Complaint, Ms. Acton made several allegations against Dr. Marcellino for her limited role in Ms. Acton's involuntary commitment at Twin Valley Psychiatric in Dayton, Ohio. Id at ¶ 30. These allegations implicated state law claims of battery, involuntary imprisonment, professional malpractice, slander and constitutional claims in violation of 42 U.S.C. §1983. Additionally, she alleged that Samaritan, by and through its agent, Dr. Marcellino, participated in a conspiracy to create a false perception of mental incompetence in order to deprive her of her constitutional rights in violation of 42 U.S.C. §1983. Id at ¶¶ 135-39.

Dr. Marcellino and Samaritan filed their Motion for Summary Judgment on September 22, 2003 asserting that all of Ms. Acton's claims were barred by the statute of limitations. Other defendants filed similar motions. Ms. Acton filed a Motion in Opposition to Summary Judgment in which she asserted that the statute of limitations was tolled during her period of confinement pursuant to Ohio Rev. Code §2305.16. In its Decision and Order, dated November 28, 2003, the District Court granted the Defendants their various motions to dismiss or motions for summary judgment. Ms. Acton filed a

timely appeal and on December 7, 2004, the Court of Appeals for the Sixth Circuit affirmed the District Court's Decision that Ms. Acton's claims were barred by the statute of limitations. On February 4, 2005 the Appellate Court also denied Petitioner's Motion for a Re-Hearing. Ms. Acton filed her original Petition for Writ of Certiorari with this Court on May 4, 2005.

B. Statement of Facts

The pertinent facts for purposes of this Petition are that Ms. Acton alleged that she contracted an illness and completed a worker's compensation form supplied by her employer which indicated that her illness was work related. (Complaint at ¶22). Thereafter, Ms. Acton's employer allegedly coerced her to change the form to indicate that her illness was not work related. Id. at ¶¶120-127. Under the apparent impression that she had committed insurance fraud, Ms. Acton contacted the Prosecuting Attorney for Preble County, Ohio as well as the Eaton City Mayor in an attempt to instigate a criminal prosecution against herself and her employer. Id. at ¶¶9, 128. Ms. Acton then met with City of Eaton Mayor Pat Taylor in which she sought to expose alleged fraud and corruption that supposedly pervaded the entire civil authority structure of the City of Eaton and Preble County. Id.

Subsequently, Ms. Acton was visited by employees of Samaritan who, in accordance with its contract with the State of Ohio, performed an initial mental health evaluation. Id at ¶24. On or about March 13, 2001, Dr. Marcellino completed an affidavit stating that Ms. Acton satisfied the mental health standard for an immediate temporary involuntary commitment. Id at ¶136. She was thereafter temporarily confined to Twin Valley Psychiatric at which she was evaluated and found to be of sound mind.

C. Reasons for Denying the Petition

The Petition sets forth no reason which justifies the issuance of a Writ of Certiorari and presents no constitutional question for this Court's review. Supreme Court Rule 10 states:

> [a] Petition for Writ of Certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

It is clear that the Petitioner is seeking a review of the Sixth Circuit's application of a properly stated rule of law.

This Court has held that a state's personal injury statute of limitations should be applied to all 42 U.S.C. §1983 claims. Wilson v. Garcia, 471 U.S. 261 (1985). Additionally, the tolling provisions for all 42 U.S.C. §1983 claims are to be determined in accordance with the appropriate state statutes. Hardin v. Straub, 490 U.S. 536 (1983). Pursuant to Ohio Rev. Code §2305.10, the statute of limitations for personal injury actions within the state of Ohio is two years. Thus, the statute of limitations for civil rights actions filed in Ohio under 42 U.S.C. §1983 is two years. Browning v. Pendleton, 869 F. 2d 989, 992 (6th Cir. 1989) (en banc). In reference to Ms. Acton's possible state law claims, the applicable statute of limitations for slander and false imprisonment is one year. Ohio Rev. Code § 2305.11. Similarly, the statute of limitations for battery is also one year. Id. The applicable statute of limitations for general personal injury actions, which includes professional malpractice claims against mental health workers, is two years. Ohio Rev. Code § 2305.10.

The time of accrual of such actions is when the plaintiff knows or has reason to know of the injury which is the basis for the action. Hill v. Sciarotta, 140 F. 3d 220 (6th Cir. 1998). At the latest, the time of accrual in the case at bar is when Ms. Acton was detained on March 13, 2001. Therefore, Ms. Acton's Complaint filed on April 4, 2003 is time barred. All of Ms. Acton's potential state law claims are time barred since every potential claim was subject to a statute of limitations of two years or less.

None of Ms. Acton's claims were tolled pursuant Ohio Rev. Code § 2305.16. That statute provides for the tolling of a statute of limitations if the person entitled to bring the action is confined in an institution while being of "unsound mind." Ohio Rev. Code § 2306.16. That tolling provision may only be claimed by a party if that person is, in fact, of unsound mind. Fisher v. Ohio University, 63 Ohio St. 3d 484 (1992). An involuntary commitment will not, by itself, establish that a person was of unsound mind. Ms. Acton failed to present any evidence that she was of unsound mind. In fact, Ms. Acton's entire case revolves around her claim that she was committed in retaliation for her exercise of first amendment rights when she was not, in fact, incompetent. These two claims are irreconcilable. If Ms. Acton was mentally incompetent at the time of her detainment, then her underlying claim for wrongful involuntary commitment would be rendered moot.

D. Conclusion

This case presents no federal constitutional issue for this Court's consideration. The District Court and The Court of Appeals for the Sixth Circuit were correct in concluding that Ms. Acton's claims were time barred and that her involuntary confinement did not toll the statute of limitations since she was not of unsound mind. Ms. Acton seeks to overturn the District

Court's and Court of Appeals' correct application of a properly stated rule of law. Accordingly, the Petitioner's Writ of Certiorari should be denied.

Respectfully submitted,

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Counsel for Respondents
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Supreme Court, U.S.
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No. 05-63

In the Supreme Court of the United States

STEPHANIE S. ACTON,

Petitioner,

v.

CITY OF EATON, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

The gist of Ms. Acton's question(s) presented to the Court focus on her claims of due process violation. She argues that her constitutional rights were violated by the trial court dismissing her claims on motion of respondents, specifically including respondents City of Eaton, Renner, Daily, Romeo, Petry and Taylor, before she completed discovery. Acton also argues that her involuntary commitment for psychiatric evaluation and/or treatment violated due process for a number of reasons and that respondents should not be entitled to immunity.

Ms. Acton's current arguments do not present any viable question worthy of this Court's time or determination. First, as to these respondents, the City of Eaton, Renner, Daily, Romeo, Petry and Taylor, Acton's claims were dismissed as barred by the applicable statute of limitations. This decision follows established Supreme Court law. Nothing in this case presents a new or unique issue to take it outside that law and no conflict among the circuits is presented.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 1

I. The Court's decision below is consistent with Supreme Court decisions 1

A. The applicable statue of limitations expired before Acton filed her complaint 1

B. The individually identified City of Eaton employees acting in their official capacities are not real parties in interest 3

C. Plaintiff fails to allege that any act of the City of Eaton appellees was taken pursuant to an unconstitutional municipal policy or custom . . . 3

II. CONCLUSION 4

TABLE OF AUTHORITIES

CASES

Brandon v. Holt 3
469 U.S. 464 (1985)

Kentucky v. Graham 3
473 U.S. 159 (1985)

Monell v. Department of Social Services 3, 4
436 U.S. 658 (1978)

Owens v. Okure 2
488 U.S. 235 (1998)

Wilson v. Garcia 2
471 U.S. 261 (1985)

STATUTES

42 U.S.C. §1983 . . . . . 2, 3, 4
Ohio Rev. Code §2305.10 2

RULES

Rule 12(b)(1) of the Federal Rules of Civil Procedure 2

Rule 12(b)(6) of the Federal Rules of Civil Procedure 2, 3, 4

STATEMENT OF THE CASE

I. Clarification of the record

Ms. Acton's claims against these respondents were dismissed on statute of limitations grounds. The "facts" presented by Ms. Acton in her petition therefore bear no relation to this fact, and are only unsupported speculation.

As relates to these respondents, the City of Eaton, Renner, Daily, Romeo, Petry and Taylor, the allegations presented in Acton's *pro se* complaint show that the last act alleged to have been done by any of them occurred March 13, 2001. Ms. Acton was involuntarily committed pursuant to a valid court order signed by Judge Dues of the Preble County Probate Court and based upon affidavits, including that of a doctor, as required by Ohio statute. Ms. Acton's complaint was not filed until April 4, 2003.

Additionally, the "facts" alleged in Acton's complaint also indicate that any and/or all the Eaton respondents were acting in their official, as opposed to individual, capacities with regard to any conduct described.

REASONS FOR DENYING WRIT OF CERTIORARI

I. The Court's decision below is consistent with Supreme Court decisions.

A. The applicable statute of limitations expired before Acton filed her complaint.

The District Court properly dismissed the City of Eaton, Renner, Daily, Romeo, Petry and Taylor and the Sixth Circuit properly affirmed that dismissal because Acton's claims are

barred by the applicable statute of limitations. The United States Supreme Court in *Wilson v. Garcia* (1985), 471 U.S. 261 held that claims under 42 USC §1983 are to be characterized as "personal injury" actions for purposes of determining the appropriate statute of limitations. Specifically, each state's limitations period for personal injury is to be applied to such claims which in this case is Ohio Revised Code §2305.10. *Wilson, supra*; *Owens v. Okure* (1998), 488 U.S. 235, 249-250. The Ohio statute of limitations for personal injury is two years. Ohio Revised Code §2305.10.

The last conduct attributed by Acton to any of these respondents in her complaint occurred March 13, 2001. This is the absolute latest, then, her claim against these respondents could have accrued. That being so, Acton's complaint filed April 4, 2003 is untimely because it was not filed within two years of March 13, 2001. Since the complaint was filed untimely Acton's claims are barred and her complaint was properly dismissed pursuant to Rule 12(b)(1) and/or 12(b)(6) of the Federal Rules of Civil Procedure because no jurisdiction exists and no claim may proceed.

The basis for this underlying dismissal is consistent with and mandated by valid, current law as pronounced by this Court. At no level of this suit has Acton argued or produced any law or evidence to take the matter outside that precedent. As a consequence, that precedent and the Federal Rules were properly followed.

Neither has Acton demonstrated any conflict among the circuits on this issue. The law is well-established that the applicable limitations period for due process claims is that for bodily injury under state law. That period was applied here. No reason exists for this Court to grant certiorari.

B. The individually identified City of Eaton employees acting in their official capacities are not real parties in interest.

Although this argument was not reached below due to dismissal of all claims against these respondents, the City of Eaton employees, Renner, Daily, Romeo, Petry and Taylor, identified by Acton individually would be entitled to dismissal in any event. The individual employees are identified and alleged in the complaint to be acting in their "official capacities" only. Suits against government officials acting in their official capacities are equivalent to suits against the governmental entity itself and the individual employees are not proper defendants. *Kentucky v. Graham*, 473 U.S. 159, 165-166 (1985); *Brandon v. Holt*, 469 U.S. 464, 471-472 (1985). Consequently, the City itself, only, not the individual City employees identified would be the real party in interest as relevant to Acton's allegations. All the individually identified City employee defendants, Renner, Daily, Romeo, Petry and Taylor, were properly granted dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

This, like the statute of limitations issues, is well-established law of this Court. No novel questions or circumstances are presented here and no conflict among the circuits is presented requiring this Court to review this issue.

C. No act of the City of Eaton was taken pursuant to an unconstitutional municipal policy or custom.

Finally, this Court expressly held in *Monell v. Department of Social Services*, 436 U.S. 658 (1978), that a municipality cannot be held liable under 42 USC §1983 simply because it employs a purported tortfeasor. In other words, a local

government cannot be held liable under §1983 on a respondeat superior theory. *Monell, supra* at syllabus Paragraph 3 and at Pages 691-695.

Acton failed to allege any acts by the City of Eaton taken pursuant to unconstitutional policy or custom and instead appears to allege only tort type conduct, if any, taken by the identified City employees. Acton is attempting to assert claims under a respondeat superior theory. This Court has held such claims are not viable. Any claims against the City of Eaton itself also fail and were properly dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

II. Conclusion

Acton has presented no basis for this Court's allowances of the Writ of Certiorari. The courts below decided the issues before them properly and in accordance with the decisions of this Court. This matter is not one appropriate to expend this Court's valuable time. The Writ of Certiorari should be denied.

Respectfully submitted,

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Supreme Court, U.S.
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05-63

No. 05A355 (05-63)

IN THE

SUPREME COURT OF THE UNITED STATES

STEPHANIE S. ACTON,

**Petitioner*

vs.

CITY OF EATON: LESLIE RENNER, DAVE DAILY, PHILLIP ROMEO, JOHN PETRY; PAT TAYLOR, City Mayor and Treasurer of P.C. Youth Foundation; PREBLE COUNTY: CHRISTOPHER B. WASHINGTON; PC. Prosecutor, REBECCA FERGUSON; P.C. Sheriff TOM HAYES; HONORABLE WILFRED G. DUES, Judge of P.C. Court of Common Pleas and Founder of P.C. Youth Foundation; PARKER-HANNIFIN CORPORATION: WAYNE PINKSTAFF, JENNY HADDUX; SAMARITAN BEHAVIORAL HEALTH, INC., LORI MARCELLINO, Psy.; PREBLE COUNTY YOUTH FOUNDATION; PREBLE COUNTY MEDICAL CENTER: HAROLD ALLEN FERGUSON, DO., MARK STEVEN VOSLER, DO. and P.C. Health Commissioner.

Respondents,

On Petition for Writ of Certiorari to the United States Court of Appeals For The Second Circuit

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PETITION FOR REHEARING

STEPHANIE S. ACTON, *Pro Se
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Eaton, Ohio 45320

TABLE OF CONTENTS

Table of Contents..... i, ii

Table of Cited Authorities iii

Reasons for Granting the Petition for Rehearing 1

I. The Court should consider and grant this Petition for Rehearing because this Petition puts forth a "substantial ground not presented" in the Petition for Certiorari, to wit, (1) the record discloses that the Denial of Rehearing entered 12-07-04, by the Sixth Circuit Court of Appeals, thereby upholding the ruling to Dismiss and Summary Judgment entered 11-28-03, by Honorable Michael R. Merz of US District Court the Southern District Western Division at Dayton, Ohio, negates the right of Due Process of Law to Ms. Acton as provided within the Fifth and Fourteenth Amendment; and (2) exemplifies a double Abuse of Discretion given a fair preponderance of the evidence presented..... 1

II. The Court should consider and grant this Petition for Rehearing because the Statute of Limitations to file the original complaint by Ms. Acton was timely submitted as provided under Ohio Revised Code, section 2305.16 Disabilities; the tolling of statute of limitations; therefore Ms. Acton's filing on April 4, 2003, is not time barred..... 2

III. The Court should consider and grant this petition for Rehearing because (1) in the case of *Escobedo v. Illinois US. 478 (1964),* the court noted that a list of criteria is to be used to conclude that a suspect has been denied the assistance of counsel; (2) in a *1949 Supreme Court opinion, Watts v. Indiana, 338 US. 49, 59 (1949),* a statement was made that "any lawyer worth his salt will tell the suspect in no uncertain terms to make no statements to police under any circumstances. Plaintiff Ms. Acton not only met the criteria of point (1), but received a court appointed lawyer having no salt value at all as described in point (2)..... 7

Conclusion..... 10

TABLE OF CITED AUTHORITIES

CASES	Page
Beck v. Wings Field, Inc, *C.C.A.Pa., 122 F.2d 114, 116, 117*	*1*
State v. Draper, *83 Utah 115, 27 P.2d 39*	*2*
Exparte Jones, *246 Ala. 433, 20 So.2d 859, 862*	*2*
Davis v. Drackett Products Co. (S.D. Ohio 1982) 536 F. Supp. 694	2
Lowe v. Union Trust Co. (Ohio 1931) 124 Ohio St. 302, 178 N.E. 255, 10 Ohio Law Rep.290.	3
Vargus v. Jago (S.D. Ohio 1986) 636 F. Supp. 425	3
Miranda v. Arizona 334 US. 436, 444, 478, 479, 86 S.Ct. 1602, 1612, 1630, 16 L. Ed. 2d 694	4,5
Escobedo v. Illinios US 478 (1964)	7, 8
Watts v. Indiana 338 US. 49. 59 (1949)	7, 9
Harvey v. State, Okl. Cr., 458 P.2d 336, 338	10
500 West 174 St. v. Vasquez, 67 Misc. 2d 993, 325 N.Y. S.2d 256, 258	10

STATUTES	
Ohio Revised Code, Section 2305. 16	2, 3
Ohio Revised Code, Section 2743.16	3

BILL OF RIGHTS	
First Amendment	3, 10
Fourteenth Amendment	2

Reasons For Granting The Petition for Rehearing

I. The Court should consider and grant this Petition for Rehearing because this Petition puts forth a "substantial ground not previously presented" in the Petition for Certiorari, to wit, (1) the record discloses that the Denial for Rehearing entered 12-07-04 by the Sixth Circuit Court of Appeals, thereby upholding the ruling to Dismiss and Summary Judgment entered 11-28-03, by Honorable Michael R. Merz of US District Court Southern District Western Division at Dayton, Ohio, negates the right to Due Process of Law to Ms. Acton as provided within the Fifth and Fourteenth Amendment, and (2) exemplifies a double Abuse of Discretion given a fair preponderance of the evidence presented.

The US District Court Southern District Western Division at Dayton granted and entered an extension of 60 days time to Plaintiff Ms. Acton as she would use those 60 days to obtain Discovery as provided in Federal Rules of Court, Rule 34 (a) and (b); and most importantly to also afford the reasonable time to engage Rule 37, the submitting of a motion to compel Defendants to release incriminate evidences. Honorable Michael R. Merz' ruling to grant an extension of 60 days to Ms. Acton was docketed as number 81 on October 9, 2003.

However, 50 days later on November 28, 2003, docket 87 was entered by Honorable Merz wherein he submitted a ruling in favor of Defendants' to Dismiss and also entered Summary Judgment, rulings that effectively abused his own discretion of his own previous ruling wherein he granted 60 days of extended time to Plaintiff Ms. Acton.

Presumably Honorable Merz' error in application of judicial Federal Rule of Court was not intended as being biased or ill willed, however his entering final rulings in favor of the Defendants' at 10 days short of Ms. Acton's extended time, indeed manifests as being unreasonable and upon giving a fair preponderance of the evidence, simply does not add up; defies mathematic logic! *Beck v. Wings Field, Inc, C.C. A. Pa., 122 F.sd 114, .116, 117.*

Moreover, the Denial of Rehearing as entered by the Sixth Circuit Court of Appeals on 12-07-04, further compounds the errors of the lower Court thereby resulting in a double Abuse of Discretion. Not only are the judicial Federal Rules of Court abused, but also the rulings themselves are judicially abused. *State v. Draper, 83 Utah 115, 27 P.2d 39; Exparte Jones, 246 Ala. 433, 20 So.2d 859.862.*

In summary, the abuses of both judicial rule and judicial ruling by these Honorable Judges are contributing factors that deny Plaintiff Ms. Acton her equal right to procedural fairness, Due Process, as provided within the Fifth and Fourteenth Amendment.

II. The Court should consider and grant this Petition for Rehearing because the Statute of Limitation to file the original complaint by Ms. Acton was timely submitted as provided under Ohio Revised Code, Section 2305.16 Disabilities, the tolling of statute of limitations; therefore Ms. Acton's filing on April 4, 2003 is not time barred.

ORC Section 2305.16 states, in part, "if a person entitled to bring any action mentioned ... is, at the time the cause of action accrues, ... of unsound mind, the person may bring it within the respective times... , after the disability is removed...

After the cause of action accrues, if the person entitled to bring the action becomes of unsound mind and is adjudicated as such by a court of competent jurisdiction or is confined in an institution or hospital under a diagnosed condition or disease which renders the person of unsound mind, the time during which the person is of unsound mind and so adjudicated or so confined shall not be computed as any part of the period within which the action must be brought."

Under Note 1 of ORC 2305.16 it states, "When a federal court adopts the state period of limitations, it will usually adopt the entire framework of the state's law, including statutory provisions relating to the tolling and the like, and the judicial construction and interpretation thereof."

Davis v. Drackett Products Co. (S.D. Ohio 1982) 536 F. Supp. 694.

Under Note 3 of ORC 2305.16 it states, "The phrase 'of unsound mind' includes every species of mental deficiency or derangement." *Lowe v. Union Trust Co. (Ohio 1931) 124 Ohio St. 302, 178 N.E. 255, 10 Ohio Law Abs. 702, 35 Ohio Law Rep. 290.*

Under Note 4 of ORC 2305.16 it states, in part, "... a US district court in Ohio will ... apply RC 2743.16, which tolls the statute only if the prisoner is of unsound mind." *Vargas v. Jago (S.D. Ohio 1986) 636 F. Supp. 425.*

The pertinent facts of Ms. Acton's case against the City of Eaton, et al., as related to point II of this Petition are as follows:

1. On 02-20-01, Ms. Acton expressed her First Amendment right to freedom of speech, and vocally announced before Eaton City Council members and a room packed with people, that she is aware of a degree of corruption within the government of Eaton and Preble County further vocalizing that she has proof of her accusations.
2. On or about 03-08-01, Eaton's Police Chief Phillip Romeo submitted a sworn affidavit to the Probate Court of Judge Wilfred Dues wherein he testifies to the derangement of Ms. Acton stating that she is homicidal, suicidal, delusional, and possesses strong religious beliefs. It appeared as though Chief Romeo had a great concern for the life of a member, or members of the community.
3. On or about 03-08-01, Judge Dues enlists Samaritan Behavioral Health, a Preble County contracted mental health service, to either confirm or negate Chief Romeo's concern about the derangement of Ms. Acton.
4. On or about 03-13-01, a non-medical doctor, Psychologist Lori Marcellino, did submit to Judge Dues a sworn affidavit confirming the derangement of Ms. Acton also stating in agreement that Ms. Acton was, indeed, homicidal, suicidal, delusional,

and possesses strong religious beliefs, and requested of Judge Dues to "pink slip" Ms. Acton to be confined within Twin Valley Psychiatric Systems, a state forensic mental hospital located in Montgomery County, for further evaluation.

5. Ms. Acton did not have representation, nor was she aware that she needed representation, therefore she was unaware to request representation, but most pertinent was that she did not dispute, either in person or within a written statement, the affidavit testimony of either Chief Romeo or non-medical doctor, Psychologist Lori Marcellino. In other-words, Ms. Acton neither confirmed nor denied being homicidal, suicidal, delusional, or possessing strong religious beliefs to Judge Dues.
6. On 03-13-01, Preble County Probate Judge Dues enters a ruling to have Ms. Acton "pink slipped" to Twin Valley Psychiatric Systems, for an involuntary mental evaluation; further giving instruction that gives the authority to any police officer to immediately lay hands on Ms. Acton, to detain Ms. Acton, and to transport Ms. Acton to TVPS, wherein TVPS internal police officers will also lay hands on Ms. Acton and continue to detain her behind secured and locked doors until such time as an expert evaluation may or may not give rise to the release of Ms. Acton.
7. On 03-13-01, while out of his jurisdiction, an Eaton City Police Officer did lay his hands on Ms. Acton, he did not read to her *Miranda* Rights, he did detain Ms. Acton by applying handcuffs to her wrists behind her back and stood her to the rear of his cruiser until such time when Chief Romeo appeared on scene outside of his jurisdiction, and he too did lay his hands on Ms. Acton, spun her around and further publicly expressing his concerns of the homicidal derangement of Ms. Acton by double restraining her as he applied a nylon cable tie to her already cuffed wrists; Chief Romeo did not read to her Miranda

Rights, but he did escort her to the back door of the first officer's cruiser and shoved her into the backseat then slammed the door shut.

8. On 03-13-01, following the transportation of restrained Ms. Acton into Montgomery County to the site of TVPS, wherein staff did also lay their hands on Ms. Acton and did detain Ms. Acton within the secured and locked doors of TVPS, Ms. Acton was not read *Miranda* Rights, however she was then in custody with many criminally insane clients referred to as consumers. Further, for the next 7 days Ms. Acton was interrogated multiple times without legal representation or legal advisement by TVPS staff which included a medical doctor Psychiatrist who continually referred to documentation submitted to them by Judge Dues, and also diagnosed Ms. Acton as being paranoid schizophrenic, delusional-grandiose type, bi-polar manic, unspecified personality disorder, and was then prescribed drug therapy, all of which Ms. Acton refused to ingest.
9. Finally, 7 days after being detained and in the custody of TVPS, after having no legal representation or advisement for 7 days, on 03-20-01, Ms. Acton briefly met a court appointed attorney, who had little to say and gave no advice, just minutes prior to a hearing on site of TVPS. During that hearing, a TVPS Psychiatrist testified to Judge George Guanaris of Montgomery County Probate as to the many diagnosis of Ms. Acton. With no advice from Michael Holz, her court appointed counsel, desiring another independent evaluation of her choice, Ms. Acton spoke out and told the judge that she has Aetna insurance and then requested to have an unbiased, impartial evaluation?"
10. On 03-20-01, Judge Guanaris did grant a continuance for the purpose of Ms. Acton to obtain another evaluation by her own choosing. He set no date for that continued hearing.

11. Ms. Acton remained detained and repeatedly requested to see her lawyer and to be assisted in arranging for another evaluation by another psychiatrist, however she received no legal assistance from her court appointed lawyer, Michael Holz, and she received no assistance from TVPS staff to engage another unbiased and impartial evaluation. TVPS staff continued to prescribe and treat Ms. Acton for the symptoms of the diagnosed mental disorders by offering specific drug therapy to Ms. Acton, who continued to refuse to ingest those drugs.
12. On 04-05-01, TVPS staff submitted a pleading to request of the court of Judge Guanaris to force Ms. Acton to ingest the prescribed drug therapy by granting to TVPS the court order to do so.
13. On 04-05-01, Ms. Acton was escorted to the hearing room where Judge Guanaris did continue Ms. Acton's hearing from 03-20-01. During this hearing Judge Guanaris received and considered testimony from yet another TVPS staff Psychiatrist, who submitted testimony that he had evaluated Ms. Acton and found no obvious disorder. As fate would have it, the psychiatrist and psychologist who diagnosed Ms. Acton with multiple mental disorders was away at a professional conference, giving rise for another TVPS psychiatrist to consult with Ms. Acton, and he did so without giving weighted validity to the documentation from Judge Dues' court.
14. On April 5, 2001, Judge Guanaris ordered the dismissal of Ms. Acton's case, ordered that the case be expunged, and ordered the release of Ms. Acton from her detainment that was initiated on 03-13-01.
15. On 04-05-01, the split second that Judge Guanaris slammed his gavel upon his bench, Ms. Acton was released from the hands of Eaton Chief of Police Phillip Romeo, released from the hands of Preble County Probate Judge Dues, released from the hands of Samaritan Behavioral Health, released from the hands of non-medical doctor Lori Marcellino,

released from the hands of TVPS staff, released from the hands of Montgomery County Probate Judge Guanaris.

In summary, On March 13, 2001, Ms. Acton was judicially considered as being deranged as evidenced by the implementation of a ruling of Preble County Probate Judge Wilfred Dues, wherein he ordered the involuntary mental evaluation of Ms. Acton, resulting from sworn affidavits submitted by only Eaton Chief of Police Phillip Romeo and non-medical doctor, Psychologist Lori Marcellino.

While in the restrained custody of police of Eaton's jurisdiction, Ms. Acton was handed over to the custody of Montgomery County and the State of Ohio's TVPS at Dayton. Further, Ms. Acton remained institutionalized, confined and imprisoned, diagnosed with multiple mental disorders and prescribed psychotropic drug therapy, which she refused to ingest, giving rise on April 5, 2001, for TVPS to submit a motion to obtain a court order from Montgomery County Probate Judge Guanaris to force Ms. Acton to ingest those many prescribed drugs.

However, on April 5, 2001, Judge Guanaris did hear sworn testimony from yet another TVPS Psychiatrist who submitted to the court that he did not observe any obvious mental disorder, hence Ms. Acton's case was dismissed, expunged, and Ms. Acton was released from custody, freed and allowed to walk out of TVPS.

III. The Court should consider and grant this Petition for Rehearing because (1) in the case of *Escobedo v. Illinois US 478 (1964)*, the court noted that a list of criteria is to be used to conclude that a suspect has been denied the assistance of counsel; (2) in a 1949 Supreme Court opinion, *Watts v. Indiana, 338 US. 49, 59 (1949)*, a statement was made, in part, "any lawyer worth his salt will tell the suspect in no uncertain terms to make no statements to police under any circumstances. Plaintiff Ms. Acton not only met the criteria of point (1), but she received a court appointed lawyer having no salt value at all as described in point (2).

Point (1). In the case of, Escobedo v. Illinois US 478 (1964), the police did not formally charge Escobedo, however, "he was in custody" and "couldn't walk out the door".

The court noted a list of criteria to be met to conclude that a suspect has been denied the assistance of counsel. That list is as follows: (1) the investigation is no longer a general inquiry, but has begun to focus on a particular suspect. (2) the suspect has been taken into custody. (3) police carries out a process of interrogations that lends itself to eliciting incriminating statements. (4) suspect has requested and has been denied an opportunity to consult with his lawyer. (5) the police have not effectively warned him of his absolute constitutional right to remain silent.

In summary, (1) Ms. Acton was not a suspect in a general investigation, she was the individual being investigated; the suspect. (2) Ms. Acton was taken into custody and remained in custody, from 03-13-01 to 04-05-01; was detained and confined with other "consumers" who each one was serving out criminal sentencing for criminal violations such as aggravated assault, rape, murder, etc. (3) Further, the TVPS staff interrogated Ms. Acton from the evidences submitted by Judge Dues, including Chief Romeo's affidavit accusing Ms. Acton of being homicidal and suicidal, both criminal and against the law. Although TVPS staff did not wear police badges, Ms. Acton recognized them as an extension of Eaton's Chief of Police Phillip Romeo, and they did so quite effectively. Ms. Acton was very fearful and unwittingly believed that she had better not be silent and answer any questions they asked. (4) Ms. Acton repeatedly requested of TVPS staff to assist her in getting legal assistance. She spoke to court appointed lawyer, Michael Holz for only a few minutes 7 days into her detainment. He gave her no advice nor did he advise Ms. Acton to remain silent unless he was there with her. In other-words, she had no legal representation. (5) No one informed Ms. Acton to remain silent until on or about 04-04-01 when Ms. Acton's husband retained an unbiased professional lawyer who immediately acted on Ms. Acton's case, hence, the hearing did occur

wherein Ms. Acton was released on 04-05-01, not because of a thing Michael Holz did because he did nothing, rather Ms. Acton finally received legal representation. Period!

(Point 2). In a 1949 Supreme Court opinion, *Watts v. Indiana, 338 US. 49, 59 (1949)*, "To bring in a lawyer means a real peril to solution of crime because, under our advisory system, he deems that his sole duty is to protect his client, guilty or innocent, and that in such capacity he owes no duty whatsoever to help society solve its crime problem. Under this conception of criminal procedure, any lawyer worth his salt will tell the suspect in no uncertain terms to make no statement to police under any circumstances".

Ms. Acton received no known court appointed lawyer while being investigated by Judge Dues court in March of 2001. Ms. Acton received no known court appointed lawyer at the instant she was detained on 03-13-01, at TVPS. Ms. Acton was introduced to a court appointed lawyer, Michael Holz, on 03-20-01, day 7 of her confinement in TVPS. Ms. Acton received no advice or defense from this court appointed lawyer who left her high and dry in the nut house behind closed and locked doors with no legal representation.

In summary, from the perspective of an alleged mental case, or "consumer", with homicidal, suicidal, delusional, and strong religious beliefs, who was detained and in the custody of a state mental hospital, the court appointed lawyer was obviously biased with the opinion that his client is nuts and wouldn't realize that she was entitled to a lawyer to begin with, much less be able to prove that she wasn't properly defended. After all, the client is nuts and resides in a nut house with other nuts. Who would believe her?

If the legal assistance that Ms. Acton received is the normal for those "consumers" that are locked-up within the mental health system, then someone needs to address this outrageous issue. In Ms. Acton's experience, she had no rights, no legal representation, and no way to get out of the institution short of actually receiving an exceptionally professional psychiatrist.

Suspects can bond out of jail, but for "consumers", bonding out is not an option.

Conclusion

The question that puzzles Ms. Acton and should equally puzzle this court, is, if Chief Romeo truthfully had legitimate cause to submit an affidavit swearing that he considers Ms. Acton as being "homicidal", when Ms. Acton was finally evaluated and possessed no obvious mental disorder to use as a justifiable excuse to commit homicide, why did Chief Romeo neglect to protect whomever he presumed to be in danger of being murdered by the subsequent arresting of Ms. Acton for the actions of premeditation to commit the murder that he was so concerned about in the first place? Ms. Acton has never been criminally or civilly prosecuted for anything relating to Chief Romeo's accusations of being homicidal which he submitted to Judge Dues.

The answer to this question lies within the fact that the Preble County residing Defendants acted jointly and individually, to conspire and engage themselves with Judge Dues in the malicious prosecution of Ms. Acton, *(500 West 174 St. v. Vasquez, 67 Misc. 2d 993, 325 N.Y. S.2d 256, 258)*, as a way to punish her for expressing her freedom of public speech, which if taken seriously and acted upon, would interfere with their individual and joint multi-million dollar business plans. So they made a collective decision to engage themselves in the manipulation of the court system via the abuse of judicial discretion by Judge Dues, *(Harvey v. State, Okl. Cr., 458 P.2d 336, 338)*, wherein he also abused the mental health system, to instill an unforgettable fear into the psyche of Ms. Acton and to punish her for exercising her right to the provisions under the First Amendment. In other-words their actions, both individually and jointly, were conspired and acted out to simply shut Ms. Acton' s mouth, at any cost, even if it killed her!

Hence, this Petition for Rehearing should be granted.

Respectfully Submitted,

Stephanie S. Acton

Stephanie S. Acton, Pro Se

CERTIFICATE OF GOOD FAITH

The undersigned hereby certifies that this petition for rehearing is restricted to the grounds specified in Rule 44.2 of the Rules of the Supreme Court and is presented in good faith and not for delay.

On this 25th day of November, 2005

Stephanie S. Acton

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